MONTANA LEGISLATIVE HISTORY

Chapter 214 19 81

Bill H 409 S _____ Original bill & history ✓C

H. Committee on Business		S. Committee on Business	
Hearing Date(s) 2-4	✓C	Hearing Date(s) 3-	✓C
2-	✓C	3-14	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out _____	___C		

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

INTRODUCED: 1/21
REFERRED TO COMMITTEE ON FISH AND GAME: 1/21
HEARING: 1/27
REPORT: DO NOT PASS, 2/10
REPORT: ADOPTED, 2/14
BILL KILLED: 2/13 YEAS: 80; NAYS: 15

HB 407—COZZENS, HUENNEKENS, DUSSAULT—TO AMEND THE TAX INCREMENT LAWS FOR URBAN RENEWAL TO ALLOW TAX INCREMENT FINANCING TO BE USED FOR URBAN REDEVELOPMENT.....
INTRODUCED: 1/21
REFERRED TO COMMITTEE ON BUSINESS AND INDUSTRY: 1/21
HEARING: 2/11
REPORT: DO PASS 2/12
2ND READING: 2/16 YEAS: 89; NAYS: 0
3RD READING: 2/18 YEAS: 96; NAYS: 0

TRANSMITTED TO SENATE: 2/18
REFERRED TO COMMITTEE ON TAXATION: 2/19
HEARING: 3/11
REPORT: 3/12, BE CONCURRED IN
2ND READING: 3/14, BE CONCURRED IN
3RD READING: 3/17, YEAS: 39; NAYS: 11

RETURNED TO HOUSE: 3/17
TRANSMITTED TO GOVERNOR: 3/20
ACTION: SIGNED, 3/25
CHAPTER 147

HB 408—COZZENS—TO EXTEND AND AMEND THE BOND VALIDATING ACT.
INTRODUCED: 1/21
REFERRED TO COMMITTEE ON TAXATION: 1/21
HEARING: 2/12
REPORT: DO PASS AS AMENDED, 2/14
2ND READING: 2/19 YEAS: 80; NAYS: 0
3RD READING: 2/24 YEAS: 98; NAYS: 0

TRANSMITTED TO SENATE: 2/24
REFERRED TO COMMITTEE ON TAXATION: 3/2
HEARING: 3/19
REPORT: 3/19, BE CONCURRED IN
2ND READING: 3/23, BE CONCURRED IN
3RD READING: 3/25, YEAS: 50

RETURNED TO HOUSE: 3/25
TRANSMITTED TO GOVERNOR: 4/1
ACTION: SIGNED, 4/6
CHAPTER 282

HB 409—KEYSER, KEEDY, PAVLOVICH, ET AL—ESTABLISHING FAIR TRADE PRACTICES FOR THE DISTRIBUTION AND EXHIBITION OF MOTION PICTURE FILMS....
INTRODUCED: 1/21
REFERRED TO COMMITTEE ON BUSINESS AND INDUSTRY: 1/21
HEARING: 2/4
REPORT: DO PASS AS AMENDED, 2/18
2ND READING: 2/21 YEAS: 79; NAYS: 19
3RD READING: 2/24 YEAS: 81; NAYS: 18

TRANSMITTED TO SENATE: 2/24

REFERRED TO COMMITTEE ON BUSINESS: 3/2
HEARING: 3/12
REPORT: 3/16, BE CONCURRED IN
2ND READING: 3/19, YEAS: 39; NAYS: 5
3RD READING: 3/21, YEAS: 47; NAYS: 1

RETURNED TO HOUSE: 3/21
TRANSMITTED TO GOVERNOR: 3/26
ACTION: SIGNED, 3/31
CHAPTER 214

HB 410—KEYSER, THOMAS, VAN VALKENBURG, ET AL—TO APPROPRIATE MONEY FROM THE GENERAL FUND TO THE OFFICE OF PUBLIC INSTRUCTION FOR SPECIAL OLYMPICS COMPETITIVE ATHLETIC PROGRAMS.
INTRODUCED: 1/21
REFERRED TO COMMITTEE ON APPROPRIATIONS: 1/21
HEARING: 3/16
REPORT: DO NOT PASS, 3/27
SUBSTITUTE MOTION, 3/28, THAT THE BILL BE PRINTED AND PLACED ON 2ND READING. MOTION PREVAILED, YEAS: 49; NAYS: 44
2ND READING: 4/3 AS AMENDED, YEAS: 45; NAYS: 54
DO NOT PASS MOTION, 4/3 YEAS: 54; NAYS: 45
BILL KILLED ON 2ND READING: 4/3

HB 411—BURNETT, BRAND—TO REDUCE THE ANNUAL FEE FOR AN ALL-BEVERAGE LICENSE ISSUED TO A UNIT OF A NATIONALLY CHARTERED VETERANS' ORGANIZATION.
FISCAL NOTE: REQUIRED
INTRODUCED: 1/22
REFERRED TO COMMITTEE ON BUSINESS AND INDUSTRY: 1/22
HEARING: 2/9
REPORT: DO PASS, 2/9
2ND READING: 2/12 YEAS: 89; NAYS: 2
3RD READING: 2/14 YEAS: 86; NAYS: 2

TRANSMITTED TO SENATE: 2/14
REFERRED TO COMMITTEE ON TAXATION: 2/16
HEARING: 3/11
REPORT: 3/17, BE CONCURRED IN
2ND READING: 3/19, BE CONCURRED IN
3RD READING: 3/21, YEAS: 48; NAYS: 0

RETURNED TO HOUSE: 3/21
TRANSMITTED TO GOVERNOR: 3/26
ACTION: SIGNED, 3/30
CHAPTER 181

HB 412—MENAHAN—TO PROVIDE FOR PAYMENT OF EMPLOYER CONTRIBUTIONS FOR MEMBERS APPOINTED BY THE GOVERNOR WHO ELECT TO BECOME MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM.
FISCAL NOTE: REQUIRED
INTRODUCED: 1/22
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 1/22
HEARING: 2/2
REPORT: DO NOT PASS, 2/4
REPORT: ADOPTED, 2/6
BILL KILLED: 2/6 YEAS: 71; NAYS: 25

HB 413—BERTELSEN—TO ALLOW A COUNTY OFFICER WHO IS PAID ON A PER-DAY BASIS TO BE PAID HIS PER-DAY RATE OF PAY FOR ATTENDANCE AT

HOUSE BILL NO. 409

INTRODUCED BY Keyser, Keedy, Cadnait, Lindeen, Daily, Mahlum, Hedrick

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING FAIR TRADE PRACTICES FOR THE DISTRIBUTION AND EXHIBITION OF MOTION PICTURE FILMS; PROHIBITING BLIND BIDDING; PROHIBITING PAYMENT OF MINIMUM GUARANTEES ON PERCENTAGE PICTURES; PROVIDING INFORMATION ON TRADE SCREENINGS; PROHIBITING ADVANCES AS SECURITY."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act shall be known and may be cited as the "Motion Picture Fair Trade Practices Act".

Section 2. Purpose. The purposes of this act are to establish fair and open procedures for the licensing of motion pictures within the state; to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution within the state; to promote fair and effective competition in that business; and to benefit the moviegoing public by holding down admission prices to motion picture theaters, expanding the choice of motion pictures available to the public, and preventing exposure of the public to objectionable or unsuitable motion pictures by ensuring that exhibitors have the opportunity to view a picture before committing themselves to exhibit it.

LC 1226/01

Section 3. Definitions. As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Blind bidding" means bidding, negotiating, offering terms, making an invitation to bid, or agreeing to terms for the purpose of entering into a license agreement prior to a trade screening of the motion picture that is the subject of the agreement.

(2) "Distributor" means any person engaged in the business of renting, selling, or licensing motion pictures to exhibitors.

(3) "Exhibitor" means any person engaged in the business of operating a theater in this state.

(4) "License agreement" means any contract between a distributor and an exhibitor for the exhibition of a motion picture by the exhibitor in this state.

(5) "Market area" means either Salt Lake City, Utah, or a major city in Montana.

(6) "Theater" means any establishment in which motion pictures are exhibited regularly to the public for a charge.

(7) "Trade screening" means the showing of a motion picture by a distributor in the market area. Such showing shall be open to any exhibitor interested in exhibiting the

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motion picture, and such exhibitor or his buying agency will be notified of such trade screening.

Section 4. Blind bidding prohibited. No distributor or exhibitor may engage in blind bidding.

Section 5. License agreements -- unlawful provisions. (1) It is unlawful for any license agreement that provides for a fee or other payment to the distributor based in whole or in part on the attendance or the box office receipts at a theater within the state to contain or be conditioned upon a guarantee of a minimum payment to the distributor.

(2) Any provision, agreement, or understanding that provides for such a guarantee is void, and any purported waiver of the prohibition in subsection (1) is void and unenforceable.

(3) It is unlawful for any license agreement that provides for a fee or other payment to the distributor based in whole or in part on the attendance or the box office receipts at a theater within the state to contain or be conditioned upon a per capita requirement defining minimum charge per ticket category that the theater owner must charge for patrons attending the motion picture.

Section 6. Bid requirements. If bids are solicited from exhibitors for the purpose of entering into a license agreement, the invitation to bid shall include the date, time, and location of the trade screening of the motion

picture that is the subject of the invitation to bid.

Section 7. Advance payments as security prohibited. (1) It is unlawful for any license agreement for the exhibition of a motion picture at a theater within the state to contain or be conditioned upon a provision, agreement, or understanding that the exhibitor shall advance any funds prior to the exhibition of the picture as security for the performance of the license agreement or to be applied to payments under such agreement.

(2) Any provision, agreement, or understanding which provides for such an advance is void, and any purported waiver of the prohibition in subsection (1) is void and unenforceable.

Section 8. Void acts. Any provision of an invitation to bid or a license agreement that waives any of the prohibitions of or fails to comply with [this act] is void and unenforceable.

Section 9. Violation a misdemeanor. It is unlawful for any person to willfully violate any provision of [this act]. Any such violation constitutes a misdemeanor, and the violator shall be punished as provided in 46-18-212.

Section 10. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect

in all valid applications that are severable from the invalid applications.

-End-

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HOUSE BUSINESS AND INDUSTRY COMMITTEE

February 4, 1981

SUMMARIES FOR

HOUSE BILL 262 -

Introduced by Rep. Smith, amends the Territorial Integrity Act to allow an electric supplier to furnish electricity to his own premises used for his business.

HOUSE BILL 321 -

Introduced by Rep. Fabrega and others, amends the Montana Consumer Loan Act to adjust dollar amounts in accordance with fluctuations of the consumer price index. "Consumer type loan business" in present statute is one which makes loans of $25,000 or less but the bill provides this ceiling may be changed on July 1 of even-numbered years if the consumer price index has changed by 10% or more and the dollar amounts shall be changed in multiples of 10%, but the dollar amounts may not be those reduced below those appearing in this act on its effective date. The bill, in effect, inserts an automatic inflation escalator in the Consumer Loan Act.

HOUSE BILL 409 -

Introduced by Rep. Keyser and others, creates the "Motion Picture Fair Trade Practices Act". The bill prohibits blind bidding, license agreements that require minimum payment guarantees, and minimum ticket prices. The bill also requires notice of trade screening and prohibits advance payments.

HOUSE JOINT RESOLUTION 4 -

Introduced by Rep. Moore, directs that within 60 days the Department of Revenue initiate changes in administrative rules to reduce paperwork connected with sale of untaxed cigarettes by a wholesaler.

HOUSE BUSINESS AND INDUSTRY COMMITTEE

Chairman Rep. W. J. Fabrega called the meeting to order at 8:00 a.m., February 4, 1981 in Room 129, Capitol Building, Helena. All members of the committee were present except Rep. David O'Hara. Bills to be heard were HBs 262, 321, 409, and HJR 4.

HOUSE BILL 409 -

REP. KERRY KEYSER, House District #81, Madison County, chief sponsor, said HB 409 establishes fair trade practices for the distribution and exhibition of motion picture films; prohibits blind bidding and payment of minimum guarantees on percentage pictures; provides information on trade screenings; prohibits advances as security.

The more he looked into this and looked at more and more what is happening to the Bozeman situation, the angrier he got. This is happening to small theater owners. These people are paying large, large amounts of property tax on all of their property throughout the State of Montana. They are employing thousands and thousands of people - young people, mainly, and they are paying taxes and they are spending money in the community and they are part of the community and are a hard working business, dealing strictly in dollars - dollars that are basically being ripped off from the theater owners in the state by out-of-state distributors. It's a practice that he couldn't believe was happening in Montana, but it is.

A theater owner is going to get an invitation to bid with a contract and then he gets a brochure. He doesn't get to see the film, doesn't get a clip - he doesn't even get a guarantee that the name of this will stay the same, that the actors will be the same as he sees on the brochure. But he puts up a lot of money and maybe he'll get what he bids on. You pay money up front before you buy it.

LARRY FLESCH, President of the Montana Association of Theater Owners, operates a theater in Shelby, Cutbank and Conrad. Theaters are independently owned businesses. Two large nationwide operators in the state, both operate in Missoula - the Commonwealth and the Mann Theaters. Theaters are viable, integral part of our town. The theater is a very prominent social part of the town. Statewide, they provide hundreds of full time jobs and thousands of part time jobs. They are a state tax base for the state, counties, and cities. Revenues remain in our state and these are becoming smaller and smaller every year. Guarantees and advances are having a bad effect on our theaters. The Montana Association of Theater Owners supports the passage of HB 409.

TIM WARNER, Bozeman, Vice President of TOI, a film buying association, buys film in Montana and in Idaho, Utah, New Mexico, Arizona, and Wyoming. New Mexico and Arizona have the anti-blind buying. It is law in about 19 other states - it was the law in Washington and Oregon. He has had experience for the last few years with both states that have this law and those that don't.

Blind bidding is where you bid for a picture or you negotiate for a picture both done blind - without seeing the product. Paramount uses this

procedure and where producers could not own the theaters. The 48-hour cancellation clause was done away with. At first blind bidding was on 2 pictures a year. Pretty soon they were blind bidding every picture - all you do get is a lot of information on a picture. Usually you don't even get a brochure. Because of financial powers, no way would they listen to their pleas. They are up against the big producers and they control 95% of the films in America. They are up against one of the largest controlled groups in the U.S. It is hard to believe that they can't even see a picture so they can exercise their own judgment. The theme of the movie might be fine in some places and not in others. In Bozeman bought a film blind, and because they didn't want that show playing in that town, the people were quite upset. They don't understand that he is buying blind. He doesn't know until it hits the screen what the film is like.

The exhibitors share most of the financial aid to the producers - they had $29 million in the bank before one film ever hit the screen. Their guarantees are put up in advance before it is ever filmed. They also make the theater owner guarantee a play day. It is a nightmare. After guaranteeing a play day, they pulled it without any warning.

Any per capita finance that you charge is going to have a bearing on the bid. Depends on what theater charges - say you were charging a dollar for kids, by putting a per capita on and if you don't charge it you are in trouble. This is very good legislation. It is also good for the industry. They will have to get it done and make a good movie and it gives some control over what we are going to play and charge to the public. He thinks what they are asking is fair and they can be counted on for support.

DON CAMPBELL, Elta Theaters, Lewistown, manages two small independent theaters. He negotiated for a film the first part of 1980 and was required to put up a $2500 advance fee. The film that was guaranteed to them in October - that size of an advance and play day hurts us and our people.

JIM BAILEY, Roxine Theater in Anaconda, received a shipment of film with a C.O.D. of what they estimated he should get from showing it. We are going to have an estimated percentage of what you are going to do. It ties up my money interest free to these companies. Universal is the company. It is a Universal business practice. He would appreciate a genuine consideration of this bill.

DIONE SMITH, Movie Haus, Laurel, had a show and their terms came out as 60% vs refusal. They grossed $127 and had a guarantee of $100, so they had $27 left. The $100 goes to the film cost and incidentals were $50 so there is nothing left. Supports HB 409

HOLLI SMITH, Movie Haus, Theater, Laurel also supports HB 409.

TOM HINES, Kalispell, representing himself, works with the theaters in Kalispell, operating four theaters and two drive-ins. The biggest problem was the Disney people. You have to charge a minimum of $1.50, but when they figure out how much for the film - 100 people times $1.50 and then they take 70% of that, so you have to charge $1.50 for kids to come to the show. You have just priced a lot of low income people from going to that Disney movie. Trying to prohibit this by this bill.

BOB SIAS, Simonse, Missoula, has a three theater independent operation.

Last year alone he borrowed $30,000 that went down the drain on guarantees of films that we were not guaranteedto see. The films were never finished and we are hard up. Can't put up with this kind of unfairness.

PEYTON TERRY, Glasgow, representing himself, owns a small theater. He used to sell cars. The price is established at the top with bigger theaters, are vying with giant producers. It is discriminatory to film some pictures in this state. There are four other Rocky Mountain states with different picture making. Urges support for HB 409.

SENATOR MANNING, Hysham, hopes this bill gets over to the Senate. He is a summer theater owner and builder. He thinks this piece of legislation is long overdue.

ART and HAZEL JENSEN, Strand Theatre, Superior, MT, have run a theatre for 46 years. They support HB 409.

JOHN SCULLY, attorney, 30-14-205 Montana statute deals with Unfair Trade Practices Act and it sounds similar to the bill. It has to do with its legality. Price fixing you will find in this situation '48-50 the industry was broken up as a result of price fixing. Only two pictures a year that were blind bid.

Why don't we rely totally on the Unfair Trade Practices Act, they will continue to argue this. The bill before you is legal. It doesn't cover all that this bill is trying to handle. We are trying to get it off our back, and you are putting it back on our back. You find out there are very simply times when government has to step in and break up monopolies and unfair trade practices.

It is a viable controlled basis here people enter into willingly on both sides. There is an invitation to bid - a competitive bid receipt and the acceptance of it which consists of an "x" in a box. Tim Warner guaranteed $15,000 in May 1980 with a playing date of October 1980 - playing time is set forth specifically. Number of seats in the facility, number of playing times, proposed admission prices to be charged is item #6. Percentages are set out. Look at the invitation to bid guarantees the film rental,minimum playing time and terms on which you are invited to bid.

Seating capacity, the house expense - this isn't a happenstance figure of $15,000 from paper, it is actually from figures. Seating capacity of 375 is figured out on what kind of showing it should be and what kind of minimum there should be. In this day of computers, time and percentages are easy to figure. We could show averages - it is a grey area.

It is not right to engage in this practice. We are getting close to '50 again of price fixing. Audits are performed by the industry to take a look at your seating capacity and figure out the expense of operating. People are losing thousands by the prebid and guarantees. You are providing a source of money by guaranteed prebids and the movie won't even be ready until December. Having a paper contract guarantees them a minimum of $15,000 for financial paper leverage. You are basically financing something you haven't even seen. You can't fix a rate on seating arrangement of a theater. They are using theater owners' money.

Because of the shortage of time, the Chairman asked other interested proponents to stand and state their names and sign the Visitors' Register. The Chairman apologized because of lack of time for them to make statements since many of them had come from distant parts of Montana.

OPPONENTS -

DON GARRITY, lawyer in Helena, and TOM KEEGAN, lawyer, representing the Motion Picture Association of America, will be available for any questions the committee might have. They were surprised at Mr. Flesch's indication that the theater owners are in bad shape. They think the theater business is in good shape and here to stay.

The motion picture producers need these people a lot worse than they need them. Their members are in competition with each other. There are 14 different films which they wanted released during Christmas. All screens are owned by the same company, but when you have 14 bidding makes for getting the better price for film producers. All of the films are done by blind bidding, and can be cancelled within 48 hours.

Using the money of theater exhibitors - Theater Owners Incorporated (TOI) didn't pay one dime to anyone for Heaven's Gate, and those advance payments are guaranteed and are never payble for two weeks before the actual showing - they are paid 30-60 days after the showing of the picture in that theater.

People testifying are from very small towns. They print 200 prints at $5,000 per print. Those prints aren't going to small towns. The movies they get have been around for a long time. They have had an opportunity to see them in larger cities. They don't pay very much for these films.

$2500 advance payment - he showed that movie on August 20, and his check was signed on August 15. The problem of his movie coming C.O.D. and when the movie arrived he had to pay the estimate of what he was going to gross on it - advance payments are usually used with people with whom they have had payment problems. Need to defend producer and to have the freedom to treat different people differently on the way they honor their contractual commitments. There is no competition in the state so the theater owners are free to negotiate on any film.

Their audience is not going to be able to go to Spokane or Denver - they will still get a trade from Montana after they have been shown in other places. This bill would prevent the kind of competition which we now have in Montana where we do have bidding. He doesn't think competition should be stricken. Keyser said this bill is a consumers protection bill. Theater owners would like to charge $1 and they would like to charge a dime for other expenses. If the committee wants to keep prices down, and will regulate prices for all popcorn, pop, etc., they would oppose such a bill. They would oppose any bill which interferes as drastically as this does in our business. Most of our film contracts are negotiated. Guarantees where the rental is bid and we have competition are called "firm deal" contracts, but most common are the negotiated contracts which are very loose and will charge you from 60-35% and depending upon how well the film does.

These are our only customers in Montana, and like all well-run businesses, we make adjustments because we want to keep them happy and in business. There are many more screens in Montana - 30% more than there were in 1967. The theater industry and theater owners are doing well in this state - don't want government involved in writing their contracts. He doesn't think anybody is coming out poorly under their contracts. Wants the bill rejected.

TOM KEEGAN, lawyer in Helena, said the state is empowered to protect the public health, welfare and safety of its people. This has nothing to do with these things. There is a monopoly in every city except Missoula because TOI, Commonwealth, and Simonse where guarantees are offered by Warner and Universal. Helena, Great Falls are monopolies. If the theater owners don't buy some pictures and doesn't show, chances are those are lost dollars. Can't expect people to go to Great Falls to see it.

Companies spend money making films in Montana - they come in, they film, and they leave. This bill slaps the companies in the face. Business needs no protection. People are staying in their home towns and are not travelling for entertainment. The theater industry is healthy and here to stay. He doesn't believe the theater industry has gone to pot from May 1979 to May 1980. He thinks HB 409 is being litigated in other states.

'All the Rocky Mountain states' is not completely accurate. Colorado killed this type of bill. Film makers will not make film in Montana was suggested. We don't want to be perceived as anti-business isolationists. If the litigation is brought to declare this law unconstitutional, it will be a very expensive suit. They want the Legislature to protect a monopolistic industry in the state.

HB 409 treats the theater owners in the State of Montana like children - you can't make a good deal for yourself. TOI has a good track record here - almost $5 million. The only way he can compete with them in starting up a new theater, would be to compete. He runs a good operation. This law says you can't compete. If the state is going to regulate in this manner, we want some protection, too. Most agreements are on a percentage of the box office. If the state is going regulate, they would have to count the house each night and put it in an escrow account in their name rather than an estimation of what they are to get. Regulate the cost of popcorn, etc. There is profiteering in the concession stands. Sell cost-plus 10 or 15%. There is no public purpose served by this type of legislation - otherwise go all the way.

QUESTIONS -

Rep. Robbins - is there blind bidding in other states? Mr. Warner - in Utah and Idaho they get it on the same basis, but don't put up the guarantees and advances. They can't screen it here. They screen it in Idaho. Should allow same things to Montana. Right now they are soliciting dates in Montana. They still pay the same percentage. You are still going to have bidding and the prices in Billings and Bozeman. They want to have the right to see the movie and not have to put up the guarantees in advance.

The film companies in Utah and Idaho are still doing the same amount of business - 100% film rental.

Rep. Kessler - bidding is taking place—Drive-in owners will bid on those. Mr. Garrity - Billings operators don't have to bid in advance. They arrange to book the films in advance, but they do not bid on them, they negotiate.

Rep. Kessler - you either bid for film or negotiate? Mr. Warner - they blind negotiate in Billings -- they still haven't seen the film. The flyer is a lot of information, but that is not usually provided that much.

Rep. Fabrega - the security deposits - paid 14 days before play day? They can get prime play time for a picture. You pay advances or guarantees two weeks before you open the picture. What is going to be the effect on the consumer's price at the theaters with HB 409? Mr. Warner - the consumer's price will change - without the per capitas you will be able to charge what you want to. They have the ability to price fix through setting per capitas. The exhibitor will be able to use his discretion on what to charge in the market place.

Rep. Vincent - in both presentations you mention bidding quite often. But you don't address the concept of blind bidding. Mr. Keegan - it is a matter of economics - they pay $9,000 per day in interest charges. Only 54% of the movies in Montana were blind bid. They could have been screened in Utah. The film gets run for the release date. A theater owner can go and see that trade screening, then he has to scramble to go and film his screen. There are more pictures than there are screens.

Rep. Vincent - there is a lot of blind bidding going on - you seem to be justifying it on the basis of the fact that that is the way the rest of the industry is all the way through. Mr. Garrity - these are very expensive productions. They have got to get those movies on a paying basis right away. We haven't seen a screening of the movies ourselves. It is a rush to get these out with the promotion, etc. Movies cost so much money. They just don't have the leisure of time to get the film made and then advertise and shown.

Rep. Bergene - present day freedom of any subject being addressed in film is very evident, is that why some films don't do so well when the prime audience is children? Is there a problem with PGs? Donna Kilpatrick, Laurel, said under the blind bidding system they have to accept the movie and part of the time they get them and they have been viewed in Billings so they kind of know what is in them. It still affects them anyway.

Rep. Wallin - when you get this brochure, do you know the rating of the film? Mr. Warner - at the time of bidding there is no rating on them.

Rep. Fabrega - can you cancel or cut any movie on a local basis? Mr. Warner - no way to cancel a contract.

Rep. Meyer - you don't receive any money on these films, but yet the theater owners say they pay two weeks in advance. Mr. Keegan - he sent

the company $2500 in June and didn't show it until August 15. Small guarantees are paid by small companies.

Rep. Fabrega- how will a movie maker know how much he is going to make? Mt. Warner - he gets a percentage of the box office. You pay 70% or you pay according to your house seating capacity at 90% and that practice will still be in effect. He will still get his percentage of the box office. Mr. Garrity - if this bill were to pass, you would be limiting some of their alternatives. They couldn't require guarantees and advance payments. If they take a percentage of the box office, they can require a flat fee. On a percentage, if the film doesn't go well, they don't do well.

Rep. Vincent - blind bid of $15,000 -- it is still in TOI bank account but ended up with a poorer picture. He was locked into Heaven's Gate and lost play time. Mr. Warner - you are really going once you commit yourself to a picture - have to commit yourself to that playing time.

Rep. Fabrega - some of the larger areas are pretty much monopoly controlled. You would be in a position to offer the movie industry to take it or leave it. Mr. Warner - they weren't clamoring that in order to get Miles City in they had to put up $3500 90-10, 70-60. Basically in Montana it is a small independent territory operating 46 screens.

Rep. Vincent - Heaven's Gate was a United Artists film. Maybe these companies have to do a little house cleaning. When Heaven's Gate was made they had this big screening in Toronto and Los Angeles. No one has seen that film. They are given carte blanche and the cost of these movie companies are escalating. Maybe these big companies are conducting business practtices that aren't that well suited to good movies and good business - they allowed that to happen to themselves, and maybe they are trying to pass their mistakes on. Heaven's Gate was bought blind by United Artists, and before that they asked theater owners to share the risk. They jerked that picture. Mr. Scully said we are lucky they jerked Heaven's Gate.

Rep. Meyer - if a movie maker comes and says we want a $15,000 guarantee plus the percentages? Mr. Warner - the way it works is you still pay the percentages - you don't pay the advances or guarantees. You just get away from the advances and guarantees.

Rep. Fabrega - if no guarantee, then they demand a flat rate? Mr. Warner - no way - they want a guarantee and a percentage so that they get it both ways. They won't sell on a flat fee basis.

Rep. Ellerd - can a theater owner or operator buy a film for a fee or a percentage? Anne Grupp, Motion Picture Association of America, Inc., Hollywood, California, said maybe $100 for a picture is a big fee for a small town, but motion pictures are very expensive, and they are put out on the basis of 75, 50, 100 vs 35, 50 of their gross vs a minimum of 75 of their gross - they get a gross or a guarantee. For approximately $100 a theater owner would be in the position to get a film.

Rep. Ellerd - is $100 too high? Mr. Smith, Laurel - yes, on some films. They couldn't have very many of those kind of films or they would go broke.

Rep. Harper - this whole enterprise is part of the free enterprise

system. The contention is that the film companies are operating under some sort of collusion and are drawing contracts that have violations in them. What violation is there in the contract offerings you have? Mr. Warner - basically, the standard contract for Helena is 90-10 70-50-40. A town like Missoula has the guarantees and advances in there. They are pretty much standard contracts. Some are actually on sufficiently higher terms than you want to pay. You know what that market is going to go for. It is a fairly common contract. There is competition going on amongst the film makers. Mr. Keegan - trade screening is not going to change your percentages.

Rep. Harper - if blind bidding was such a bone of contention to be used for one film over another, why is this so? Mr. Scully - the producer or the distributors have said that they are really buying it blind also, and have not seen the text. How do they figure their minimums - on seating capacity. The bill says simply, we do not want to negotiate or bid or buy sight unseen; and second, we don't want to have a fixed rate. They don't see it either most of the time, but they are asking the exhibitor to take the risk. This paper is financial legislation in the financial world. We don't get a chance to see it and are being asked to take a chance also.

Rep. Keyser closed saying the makers of Star Wars made over a billion dollars in profits - it is not a $1 million business industry. The motion picture people may not make movies in the state, but that has not proven to be true in other states. There are no regulations, no controls. There is no state agency mentioned in the bill. He wants to stop the practice that an industry cannot look before they can present it to the public. He thinks the bill is very well needed and would hope the committee gives it a do pass.

HOUSE BILL 262 -

REP. CARL SMITH, House District #57, Powder River County, sponsor, hadRiley Childers, Montana Association of Rural Utility Cooperatives, explain HB 262 amends the Territorial Integrity Act to allow an electric supplier to furnish electricity to his own premises used for his business.

BILL JARDIN, Attorney for the Tongue River Electric Co-Op, supports HB 262. The REA Act was first offered to private utilities in 1930; however they didn't want to get into the rural areas, and rather than build lines to serve a small ratio of customers compared to the miles of lines, they preferred to serve higher density areas. See his EXHIBIT B.

Montana Power Co. is negotiating presently with the BN to acquire a lot of their property near Castle Rock subdivision. This could lead to a situation similar in some respects to the one that is in court now concerning the Colstrip subdivision .

SENATOR ED SMITH, District #1, supports HB 262. He was very much involved in the Territorial Integrity Act in 1971 and did a tremendous job between investor owned and cooperative utilities. In 1971 it was so

VISITORS' REGISTER

HOUSE _____ COMMITTEE

LL _____ Date _____

ONSOR _____

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOS
Anderson	Dillon, Mont.	Vigilante Elec Co-op	✓	
[illegible]	Helena, Mt.	Mt. Consumer Finance Assn	321	
Tom Warner	Bozeman, MT	My Self	409	
[illegible] Hines	Kalispell, MT	My Self	409	
[illegible] Alke	Helena	Mid-Dak Dairy		262
[illegible] Pickrell	Polson	myself	409	
[illegible] Larson	Glasgow	Myself	409	
[illegible] Snyder	WOLF POINT	"	409	
[illegible] Pickrell	Polson	Myself	409	
Don Campbell	Lewistown	Elta Theatres	409 ✓	
[illegible] Kjartanson	Havre	Movie Haven	409	
Van Steenbergen	Great Falls	Orpheum Theatre	409	
Art Jensen	Superior MT	Admiral Theatre	409	
Ralph Jensen	Superior MT	Star Theatre	409	
[illegible] Jensen	Thompson Falls	Rex Theatre	409	
Larry Manning	Hysham		409	
[illegible] Wells	Helena	T.O.T.	409 ✓	
Joyce Brooks	HELENA	MPA	262 X	
Connie Sheck	Shelby	Entertainer	409	
[illegible] Sheck	Shelby	Entertainer	409	
[illegible] C Emery	Missoula	Commercial	409	
Bob Sears	Missoula	Simonsen	409	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE _____ COMMITTEE

LL HB 409 Date 2/4

ONSOR _____

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOS
Ward Shaar Jr	405 Welmc Bldg	W.A.S. Mon Co	409 ✓	
L Ranstrom	806 Wilma Bldg.	W.A. Simons	409	
nny Wagner	48 Gold Bar Mt 59d.	T.O.I.	409	
Bing Wilson	3122 Ambrose Bozeman	Lifetrees	409	
Tim Hausmann	827 Blackmore Pl	Theatres	409	
[illegible]	227 PONDEROSA MILES CITY	"	409	
[illegible]	Miracle	— — —	←	
Tom Keegan	Helena	MPAA		409 ✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE B&I COMMITTEE

BILL HB 409 Date

SPONSOR KEYSER

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
JON GARRITY	HELENA	MOTION PICTURE ASS'N OF AMERICA, INC.		✓
TOM KEEGAN	"	"		✓
ANNE GRUPP	HOLLYWOOD, CAL.	"		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME Sam Flint BILL No. 409

ADDRESS Helena, Mont DATE 2/4/81

WHOM DO YOU REPRESENT MPEA

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

NAME Timmer BILL No. 409

ADDRESS Bozeman DATE 2/4/21

WHOM DO YOU REPRESENT TU

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

NAME Doris Smith BILL No. HB 109

ADDRESS 419 S 2nd St Laurel DATE 2/4/81

WHOM DO YOU REPRESENT Montana Nurses' MANA

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

NAME Peter Tarr BILL No. 409

ADDRESS Wilmington DATE 2/4/81

WHOM DO YOU REPRESENT Myself (Sierra Club)

SUPPORT 409 OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

NAME Holli Smoot BILL No. HB 409

ADDRESS 419 W. 9th Laurel, Mt. DATE 2/4/81

WHOM DO YOU REPRESENT Montana Hard Rock Miners

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

NAME John Sills BILL NO. 409

ADDRESS 3093 Sundance Rd Bldg. DATE 2/4

WHOM DO YOU REPRESENT MATO

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

CS-34
1-79

NAME JANUS KOSKI BILL No. 409

ADDRESS Laurel, MT. DATE 2-4-81

WHOM DO YOU REPRESENT MOVIE HAUS

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

NAME Donna Kilpatrick BILL No. 469

ADDRESS Laurel, MT DATE 2/4/81

WHOM DO YOU REPRESENT Mont Hams

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

Exhibit A

STATEMENT OF MOTION PICTURE ASSOCIATION
OF AMERICA IN OPPOSITION TO HOUSE BILL 409

House Bill 409 outlaws many of the existing business practices of the motion picture industry, practices which have been proven in the marketplace. This bill dictates new terms for contracts between motion picture distributors and theater owners and provides that the distributor and theater owner cannot agree among themselves to waive any of those terms. The bill makes it a crime, punishable by up to six months in jail and a fine of up to $500, for a theater owner or a motion picture distributor to violate any of its provisions.

Why do the sponsors of this measure want to involve Montana's government so extensively in the affairs of a private business? Montana's theater owners are not inexperienced amateurs at the mercy of the major film producers. They are experienced professionals operating large and successful businesses. The majority of the movie theater business in Montana is done by just four companies -- Mann Theatres Corporation of California; Commonwealth Highland Theatres, a Colorado corporation; Theater Operators, Inc., a Wyoming corporation; and Carisch Theaters, Inc., a Minnesota corporation. According to their latest reports, on file with the Montana Secretary of State, those companies had gross receipts of 132.9 million dollars in 1979. The same reports show that those companies took in more than 8.9 million dollars from their Montana operations in that year.

These are not people with whom motion picture companies feel free to deal on a "take it or leave it" basis. They control a large and profitable market for our product. In fact, they are the only market for our films in Montana. We need them to rent and show our

movies far more than they need us. Last Christmas, our members had fourteen films scheduled for release. Helena has four screens. Who is in the better bargaining position? Our rental negotiations with Montana theater owners are far from one-sided affairs. They are tough, able bargainers who are managing their business quite well without the interference of Montana government. The president of the Montana Theater Owners' Association recently reported that, with attendance at Montana theaters increasing, "The theater industry is healthy and it is here to stay." (Great Falls Tribune, May 1, 1980, p. 6-B). Montana theater owners clearly are not in need of the massive governmental intrusion into their business affairs which House Bill 409 would sanction.

With that background, let us examine the specific provisions of House Bill 409.

1. BLIND BIDDING

House Bill 409 prohibits motion picture distributors and theater owners from bidding, negotiating or contracting for the rental of a motion picture until the exhibitor has had an opportunity to see the movie. That sounds reasonable, doesn't it? Unfortunately, the economics of producing motion pictures are such that in many cases producers simply cannot afford the delay that special pre-release showings of a completed film to theater owners would entail.

Because theater owners are the prime market for their products, motion picture producers do provide "trade screenings" for theater owners before bidding or negotiating for their rental as often as circumstances permit. In 1980, members of the Motion Picture As-

sociation of America released 131 films for distribution in Montana. Of those films, 55 were trade screened prior to bidding or rental negotiations. Four were re-releases of earlier movies with which the theater owners were already familiar. One was rented without a trade screening but with a provision in the rental agreement allowing the theater owner to cancel the agreement within 48 hours of receiving the movie. Only 71 of the 131 films were rented "blind", without a trade screening (54%). A majority of Montana's theater owners did not attend the trade screenings of those films for which they were available, even though they were frequently held in Denver or Salt Lake City.

It should be emphasized that no Montana theater owner is compelled to bid on or negotiate for any motion picture before he has seen it. He is free to refuse to bargain for any film. He can wait until the film is released in other areas, see it there, and study the box office receipts it generates before committing himself to exhibit it. Of course, if his theater is located within one of the three cities in this state which has competing theaters, his competitor may take the risk and book the film "blind." House Bill 409 would deprive competing Montana theater owners of that freedom of choice.

Motion picture producers bid blind too -- on a much larger scale than any theater owner. They commit themselves to the expenditure of millions of dollars to make a movie from a book, a play, or often on the basis of a rough idea for a movie. The average production cost for a motion picture by a major company is now over ten million dollars. Advertising and promotion can add another five million dollars. Firm commitments for prime time television commercials

must be made as far as eleven months in advance. Release of the film must coincide with the advertising. Delay in booking a film into theaters may not only miss the impact of an expensive advertising campaign but imposes serious financial burdens on the producers. At today's interest rates, a movie budgeted at fifteen million dollars for production and promotion means over nine thousand dollars a day in bank charges! And most theater owners do not pay their rentals until from 30 to 60 days after they have shown a film.

We must get our products on a paying basis as soon as possible. Blind bidding is often the best means of doing so. Our notices to bidders tell them as much as we can about the as yet unfinished movie. If it is based on a book or a play, we tell them that, together with the figures on sales for the book or play. We tell them what the story is about, the audience at which the film is directed (family, adult, youth, etc.), who the stars are, the name of the director and producer, and the advertising campaign planned to promote it.

On the basis of that description, we invite bids or enter into negotiations with theater owners for rental of the film. At the time bids are invited, we have not seen a final print of the movie ourselves. We are not in the business of misleading theater owners. Our relationship is, of necessity, one of mutual trust. Every unsuccessful movie which we produce makes it more difficult to market our other films. Since most of our rentals are based on a percentage of box office receipts, we want our films and the theater owners who rent them to do well. Motion picture distributors often revise the

terms of a rental agreement downward where a film has not done well in a particular theater. For example, the film "Dressed to Kill" was rented to the Campus Cinema in Bozeman on the basis of 70% of ticket receipts. When it did poorly, that rental was voluntarily scaled downward to 35%. We trust the theater owners to give us an honest count of their box office receipts. They trust us to provide them with a quality product.

On occasions, we are both disappointed. But we lose much more from an unsuccessful film than the theater owners.

"Blind bidding" is not uncommon in our economy. Manufacturers spend millions on research and development without any assurance that they will develop a marketable product. Exploration for oil and gas proceeds with only limited knowledge of what lies beneath the earth's surface. The consumer is asked to blind bid on many products. When he buys a book or a ticket to a play or a film, he does so on limited information. When a movie patron is disappointed in a film, he has no recourse to recover his expense. Would the theater owners be willing to require by law that they could collect payment from their patrons only <u>after</u> they had seen the movie and then only in the amount the patron thought it was worth?

2. OTHER RESTRICTIVE PROVISIONS OF THE BILL

House Bill 409 would also greatly impair the freedom of motion picture distributors and theater owners to contract in other areas. It would outlaw contract provisions calling for minimum payment guarantees and advance rental payments. If this bill is being sold on the basis of the theater owners' need to see a film before negotiating for its rental, why are these provisions necessary? Do the theater owners want the State of Montana to guarantee them a profit as well?

Montana has a comprehensive Unfair Trade Practices and Consumer Protection Act, enacted in 1973, which already provides adequate protection for theater owners. (Sections 30-14-101, et seq., MCA). The state should not be writing our contracts.

Advance rental payments and guarantees, which would be prohibited by House Bill 409, are sometimes required but they are almost never payable until two weeks before the film is delivered. Such deposits or advance payments are usually required of theater owners whose credit is poor or unknown or who are slow in paying their bills. Every business makes similar demands of such customers. They are a legitimate means of doing business and should not be prohibited.

3. HOUSE BILL 409 IS NOT A CONSUMER PROTECTION BILL

In its statement of purpose, House Bill 409 indicates that it will benefit the moviegoing public by "expanding the choice of motion pictures available" and "holding down admission prices". It will do neither.

Nothing in this bill would or could require motion picture producers to make more movies and all of our production is available for screening in Montana. This bill will not reduce or "hold down" admission prices. States which have enacted similar laws have experienced rising ticket prices just as have states without such laws.

If the sponsors of House Bill 409 really want to "benefit the moviegoing public by holding down admission prices to motion picture theaters" (Section 2), they can draft a bill empowering some state agency to regulate ticket prices and the price of popcorn, candy, and soda pop as well. We suspect the theater owners would object as strongly to such a measure as would we.

CONCLUSION

House Bill 409 is an unwarranted government interference with

the contracting practices of a private industry. According to figures compiled by the Montana Travel Promotion Unit, motion picture production companies have spent over 30.5 million dollars in filming movies in this state since 1974. An itemized report of those expenditures is attached to this statement. The movie "Heaven's Gate", which to date has been a financial disaster for its producer, spent some 17 million dollars in Montana.

The motion picture industry is a substantial contributor to the Montana economy. We think that entitles us to fair treatment from Montana government. House Bill 409 is not fair -- it is punitive and unnecessary. We earnestly request your vote against this measure.

Respectfully submitted,

MOTION PICTURE ASSOCIATION
OF AMERICA

By Donald A. Garrity
Donald A. Garrity

Thomas M. Keegan
Thomas M. Keegan
1313 Eleventh Avenue
Helena, Montana 59601
Registered Lobbyists

DEPARTMENT OF HIGHWAYS

TED SCHWINDEN, GOVERNOR
[redacted]
2701 PROSPECT
STATE OF MONTANA
HELENA, MONTANA 59601

MOTION PICTURE REVENUE

Year		Film	Estimated Revenue Left in Montana	Total
1974				
	Aug. - Oct.	KILLER INSIDE ME Butte - Universal	$ 450,000	
	April - June	RANCHO DELUXE Livingston	500,000	
	Aug. - Oct.	WINTERHAWK Kalispell - Charles B. Pierce	432,000	$ 1,382,000
1975				
	June - July	MISSOURI BREAKS Billings, Virginia City & Red Lodge Universal	5,000,000	
	Aug. - Oct.	WINDS OF AUTUMN Kalispell - Charles B. Pierce	425,000	
	August	(TV) Millers Beer - Commercial Great Falls	10,000	
	August	1/10 POTATO FRITZ Helena - West German Film Co.	15,000	$ 5,450,000
1976				
	Feb. - July	BEARTOOTH Red Lodge - ESI Production - Waco, Tx.	225,000	
	August	1/10 DAMNATION ALLEY Flathead Lake - 20th Century Fox	90,000	
	August	(TV) ALPO - COMMERICAL Forsyth - Dog Food	10,000	
	August	PONY EXPRESS RIDER Virginia City - Doty Dayton Prod. Salt Lake	15,000	$ 340,000
1977				
	April	TELEFON Great Falls - MGM	220,000	
	June	GREY EAGLE Helena - Charles B. Pierce	475,000	

"AN EQUAL OPPORTUNITY/HANDICAPPED EMPLOYER"

June	DR. HOOKER'S BUNCH Red Lodge - ESI Production	450,000	
August	(TV) DAY OF HELL Aubrey-Lyons Prod. Warm Springs	500,000	
October	(TV) XMAS MIRACLE IN CAUFIELD, U.S.A. 20th Century Fox - Roundup	400,000	
October	SCHOOL BUS SAFETY FILM DOCUMENTARY Missoula	1,500	$ 2,046,500
1978			
Feburary	WINTER RECREATION U.S.T.S. Film - Whitefish	2,000	
February	WEST YELLOWSTONE SNOWMOBILE RACES Warner Miller Prod. West Yellowstone	2,000	
August	THE SHINING Stanley Kubrick -- Hawk Films, Ltd. Herts, England Warner Bros. Glacier National Park - Scenic Background	50,000	
October	WHITEHORSE SCOTCH - COMMERCIAL Film Fair, Los Angeles Red Lodge Area	20,000	
October	(TV) RODEO RED AND THE RUNAWAY GIRL Highgate Pictires Learning Corporation of America Billings - Broadview	200,000	
December	DATSUN - COMMERCIAL Billings Area	20,000	$ 294,000
1979			
January	ARTIC CAT - COMMERCIAL Lyle McIntire Wilson - Kriazh Los Angeles - West Yellowstone	3,000	
February	TOTAL ECLIPSE ABC News Special - Helena	10,000	
February	TOTAL ECLIPSE Astronomical Society of America Paul Ryan - Lewistown & Helena	10,000	

Feb. - Oct.	HEAVENS GATE United Artists Kalispell, E. Glacier, Butte & Pole Bridge	17,000,000	
March	SECURITY BANK - COMMERICAL Fry - Sills Associated Film Makers - Miami, Florida Billings Area	8,000	
March - May	HEARTLAND Film Haus/Wilderness Women Prod. Harlowtown - White Sulphur, Two Dot	500,000	
May - June	(TV) WALKS FAR WOMEN - NBC EMI Production Billings, Hardin, Red Lodge	1,400,000	
	MILLER BEER - COMMERCIAL Backer and Spielvogel, Inc. Great Falls, Dillon	20,000	
June	(TV) SOUTH BY NORTHWEST Production - Black Pioneer Virginia City - Nevada City	80,000	
August	RICHARD LEVINE - COMMERCIAL American Airlines Productions Great Falls	10,000	
Sept.	WINSTON - COMMERICAL Frank Moscoti - New York Kalispell, Thompson Falls & Pole Bridge	50,000	
October	TIRE PRODUCT - (BANGDAD) COMMERCIAL Great Falls - Missoula - Cedar Rapids, Iowa Vieda Limited	5,000	
	MILLER BEER - COMMERICAL Backen & Spielvogel, Inc. Red Lodge	70,000	
November	WRIGLEY'S GUM - COMMERICAL Hang Glider Kalispell - Corum	50,000	$19,216,000
1980			
June	GENERAL ELECTRIC CO. - COMMERICAL Big Sky	10,000	

July - August	FAST WALKING Lorimar Prod. Deer Lodge - Old Prison Rocker	1,750,000	
August	GOOD MORNING AMERICA - TV Billings Area	5,000	
September	BIG JOHN JEANS - JAPANESE COMMERCIAL Pyramid Production Bozeman - Livingston	10,000	
	AMERICAN TRAIL - TV DOCUMENTARY Syndicated TV in 25 states Smiloft Television, Lincoln, NE Missoula - Glacier National Park - Big Fork	6,000	
October	KHQ TV - DOCUMENTARY PM MAGAZINE Spokane, WA Moiese Bison Range - Virginia City	5,000	
	CONTINENTAL DIVIDE - FEATURE Universal Studio West Glacier - Apgar - Eagle Migration 3 week shoot	10,000	
November	BIG JOHN JEANS - JAPANESE COMMERCIAL - 2nd Shoot Pyramid Production Bozeman - Livingston	10,000	
			$ 1,806,000
			$30,534,500

JW/kg/S27

HB 409

February 5, 1981

Members of Business &
Industry Committee
Montana House of Representatives
Helena, MT 59601

Dear Committee Members:

I am submitting as testimony, the following documents to help clarify in your minds why the exhibitors of Montana are not only opposed to the blind bidding aspect of the film buying arrangement, but also the guarantee and advance portion of the Bill.

The guarantee portion of the Bill is primarily offensive to the small towns of Montana. However, it does have a severe economic impact on the larger towns in the state. I will cite some examples of which I am personally aware, however, it is very common for these examples to happen to any exhibitor in the State of Montana.

We feel that the film companies are entitled to a percentage of the film gross in any given market place, and the percentage is negotiated either through bidding or negotiation with the film company. But by including guarantees in that negotiation, the film companies are forcing an unfair risk on the exhibitor client in the market place.

Because of the nature of the film business, motion pictures which might do extremely well in large communities might not do as well in the Montana communities due to the theme of the motion picture. In our small communities there are several factors that can alter the gross such as bad weather or local high school football or basketball games, etc.

By including guarantees and advances, they are altering the agreed upon percentage, since if a film does not gross a certain amount, the exhibitor still pays the guarantee, thereby paying a higher percentage.

An example of this is that in Billings, Montana, Theatre Operators Incorporated put up a guarantee of $50,000 on THE EXORCIST. The picture only grossed $58,000. The following is a chart showing what we should have paid on a percentage basis.

Weeks 1-3	Gross $35,000 x 70% =	$24,500
Weeks 4-6	Gross $12,000 x 60% =	$ 7,200
Weeks 7-9	Gross $11,000 x 50% =	$ 5,500
	Total % Payment	$37,200 or 64%

If we had just paid the percentage, the film rental would have been 64% for the 9-week period. However, because of the guarantee, the film rental for the 9-week period was 87%. Also, in addition to the $12,800 loss in film rental, we also lost our weekly house expense of $3,000, or $27,000 for the 9-week period, bringing the total loss to approximately $50,000 on a picture which Warner Brothers Communications made millions.

In some small communities which I buy for such as Cut Bank, Conrad, Shelby, Hamilton and Miles City, it is not uncommon for the film companies to place a $1000 guarantee on a motion picture. If a motion picture only grossed $1500, it would normally be settled on a percentage basis at 35% or $525. However, because of the guarantee, the film rental percentage changes to 66%.

One example is in Conrad, Montana, we put up a $500 guarantee vs 35%. The show only grossed $950 and we should have paid 35% or $333, yet with the guarantee, we paid 53%.

Another example is in Bozeman, Montana we paid a $25,000 guarantee on THE EXORCIST and the picture only grossed $23,000. The following chart shows the percentage we should have paid.

Weeks 1 & 2	Gross $14,000 x 70% =	$9,800
Weeks 3 & 4	Gross $ 6,000 x 60% =	$3,600
Weeks 5 & 6	Gross $ 3,000 x 50% =	$1,500
	Total % Payment	$14,900 or 65%

However, because we had paid a guarantee on the motion picture of $25,000, we ended up paying 109% in film rental.

In closing, as the exhibitors of Montana, we sincerely feel that we have an obligation with the film companies to share the risk for the picture playing in our market place. However, we do feel that this risk is equally shared when the movie is bought on a percentage basis and both parties receive a percentage of the gross that is realized in the market place.

The exhibitor in Montana has already invested very substantially in the movie business with his theatre property. An example of this would be that in Bozeman, Montana, Theatre Operators Incorporated has just invested $1,089,000 to build the Campus Square Theatre facility, and in the past year we have invested several million dollars in Billings, Montana between the Rimrock Four, the World West and the Crossroads Theatres. Also, in Helena, Montana, we have invested well over $1 million in our theatres there.

At no time in making these investments, have the film companies guaranteed us or guaranteed our notes at the bank.

I am sure that the exhibitors throughout the State of Montana can cite very similar investments according to the size of the community in which they operate.

If you have any need for further examples or clarification, I would be more than happy to visit with you. Thanking you in advance for your time and cooperation.

Kindest regards,

Tim C. Warner
Theatre Operators, Inc.

TWbp

EXECUTIVE ACTION -

Rep. Kitselman moved HOUSE BILL 574 Do Pass. Motion was unanimously adopted.

Rep. Kitselman moved HOUSE BILL 710 Do Pass. He then moved that an amendment on page 2, line 11, changing "10" to "5" be adopted, which was unanimously passed. HB 710 was unanimously adopted as DO PASS AS AMENDED.

Rep. Metcalf moved HOUSE BILL 577 Do Pass. Motion was adopted 15-2. Rep. Ellerd and Rep. Andreason voted No. There were two absent.

Rep. Manning moved HOUSE BILL 654 DO PASS. He then moved that an amendment to title, line 7 to strike "INCREASING" and insert "ELIMINATING LIMITS ON" be adopted, and it was unanimously accepted. Motion to DO PASS AS AMENDED HB 654 was unanimously adopted with two members absent.

Rep. Metcalf moved HOUSE BILL 706 Do Pass. Motion was later withdrawn.

Rep. Kitselman moved HOUSE BILL 706 be tabled. Discussion led to having the researcher prepare an amendment that would clearly indicate that on a renewal of an insurance policy, there has to be a 30-days notice prior to the expiration and after that a 10-day notice applies.

HB 385 was discussed. The committee wanted to mandate that the public trust is being carried out. Section 4, subsection (1) was to be reinserted in the language. The title would have to have an amendment also.

Rep. Metcalf said HOUSE BILL 409 prevents blind bidding before licensing a screening company. He moved proposed amendments for the purposes of discussion, and then moved they be adopted which they unanimously were. Rep. Metcalf then moved HOUSE BILL 409 AS AMENDED DO PASS, and it was unanimously adopted. Reps. Ellerd and Ellison were absent.

Rep. Meyer moved HOUSE BILL 395 DO PASS. He then moved proposed amendments. Discussion brought out this bill would give the PSC an opportunity to look at hard numbers and to consider CWIP. Section (c) requires a utility to demonstrate that this would make for a lower rate to the consumer. Pollution control rating is considered by the PSC. It would make the practice in Montana correspond with the way FERC does it at the present time. FERC allows pollution control equipment to be considered in the rate base. Mr. Burke disagreed only to a degree with Mr. Opitz. The PSC may need some additional staff people. There is a very definite meaning of what pollution control is, and it is very clear what part of a plant is pollution control related. Proposed amendments are on EXHIBIT D.

Rep. Fabrega raised the question where this is clearly defined. Mr. Burke said the PSC knows what is included in pollution control and what is not, and would have no trouble in reviewing what is and what is not pollution control related. It would be as determined by the Commission.

Other types of energy generation such as wind, biomass, solar are being considered, and because it may take several years for construction

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 12, 1981

The regular meeting of the Business and Industry Committee was held at 10 a.m. in the Scott Hart Auditorium on Thursday, March 12. All members were present.

HOUSE BILL NO. 409: Representative Keyser, District 81. This bill establishes fair trade practices for the distribution and exhibition of movies. "Blind Bidding" which means bidding, negotiating, offering terms, or agreeing to terms for a contract to show a movie prior to a trade screening, is prohibited. An agreement that provides for payment to a distributor based on attendance or box office receipts cannot be conditioned on a guaranteed minimum payment to the distributor. I couldn't believe in this day and age what was happening to the theater owners in the State of Montana. 95% of the film companies are controlled by a minute number of giants in the U.S. When a movie house is in the business of showing films they are in complete control. This bill offers a chance to many of the small owners. Blind bidding is simply this, you get a contract in the mail and it is an invitation to bid. You either take this bid or you won't show the film. He went through the bill and read parts of the requirements. He said they send a brochure, you don't get to see the film. It states who will be in the film and might have a picture of the star. He went on and listed some of the expenses of the theater owners. If you think this bill is just for the large theater owners I want you to look at the people from all over Montana who are representing the whole state. It all boils down to a matter of dollars, and many dollars are being ripped off. This bill is now present law in twenty states, including Utah, Washington and Oregon.

PROPONENTS:

LARRY FLESCH: President, Montana Association of Theater Owners. We are not trying to lower the price of their products. We employ hundreds of workers. We have the support of many Chambers of Commerce. The issue is that we want to use our own common sense, our own judgment, to determine if a movie is something we wish to present in our own communities. There are 19 states and Puerto Rico who have this bill and it is being considered by 14 more. When we deal with such giants as Columbia, our voice is like a "sob in a hurricane".

DIANA SMITH: Theater owner in Laurel. I believe that my theater could provide a modest income if we were only required to pay 35%. Last year we grossed $40,000 and paid out $18,000, and the

10% is the difference between income and qualifying for food stamps. If the large owners are charged 50 or 90% then we were charged 35%, but most of them are 45%. If I had to make a living from my theater I couldn't do it.

TOM HINES: Kalispell theater owner. The theaters have been owned and operated by the same family for over 60 years. We feel the bill will help small operations like our own. We have to negotiate without ever having seen the film. That is the big problem and that is what we are really addressing. It puts the small theater owner in a bad position. We are at the mercy of the company.

RICHARD SNYDER: Wolf Point Liberty Theater. I want to address the guarantee on the percentage. He explained how this would work. For $125 I get a picture for a three day run. I pay the difference between what it grosses and what I pay. That is the difference between the guarantee and the percentage.

MARVIN MILLER: Dillon theater owner. We are not faced directly with blind bidding because we are the only theater. But it does affect us because we have to pay a guarantee on the film before we get it. He explained how it affects him. He explained how it works in Idaho.

BOB SIAS: Independent; Missoula has four theaters. Our family has been in business for 60 years. We are slowly being squeezed out of business by the film companies by blind bidding. I am just here to plead for survival. We have to bid against each other to show films. Last year we lost $50,000 on blind bids. Missoula is the only Montana city in which there is enough competition to justify bidding. In other major markets the buyers receive a brochure from the companies explaining who is in the film and what it will be about. The supplier demands that the theater owners agree to buy for either a minimum price or percentage of the gross depending on which is higher and that the movie be booked for showing at a specific time. We are virtually being put out of business by the tyranny of powerful film companies who require us to bie for product without seeing it, and who demand exorbitant guarantees and terms. Please support HB 409, an act establishing fair trade practices in the distribution and exhibition of motion picture film.

JIM BAILEY: Hamilton, two theaters. I would very much appreciate your consideration of HB 409 at the hearing to be held on Thursday. This bill is highly important to me as a small theater owner as it could well make the difference of survival in the future. I have in the past had certain film companies send me a bid with a

picture with a C.O.D. charge unbeknownst to me on top of the freight charges. I have found that lots of times the film does not live up to my expectations. We need something that will allow us credit. It has cost me the extra expense of being a booker.

DON CAMPBELL: I have two outdoor and one indoor theater in Lewistown. We want this legislation and I ask that you do all you can to help us. As a member of the Montana Association of theater owners and an independent exhibitor, I believe the bill would benefit the exhibitors as well as the Montana movie goers. The intent of the bill is to outlaw blind bidding and the negotiations as a means of selling a film companies product. It also prohibits the film companies from placing minimum guarantees or advances on playdates. Rural Montana theaters rarely get caught up in the bidding process however, the theaters are requested to pay advances and also per capita requirements in certain areas. When larger towns are paying higher prices these same higher prices are being extended to smaller towns as well. I want to continue to provide suitable entertainment to all citizens within central Montana. With the best efforts of each and every one of us, I feel confident it will be possible. I urge your careful review and support of this legislation.

TIM WARNER: On behalf of the Montana Association of Theater Owners, I would like to clarify some terms and provisions of the bill for your consideration, because they might be confusing to persons outside the motion picture industry. I am currently employed as the Vice-president and General Manager of Theater Operators, Inc. In addition, I am employed by several independent theater owners of Montana to represent them as a film buyer. A film buyer is an individual that acts as a broker or a go-between for the theater owner and the various film companies. Most of the theaters I represent, I do not have a financial interest in the theater properties and strictly work on a fee basis to the independent theater owner. In addition to myself, there are several other film buyers who represent various exhibitors in Montana. There are also several theater owners who represent themselves to the various film companies. The term "blind bidding" or "blind negotiating" simply means the current practice of the MPAA companies to solicit, either through bid or negotiation, playdates on their films without the exhibitor or the film buyer having seen the motion picture or its performance in other market areas. These playdates are solicited as far as a year in advance, however, most average six to eight months. In addition to having to buy blind, the current practice in the industry is to have the exhibitor guarantee a minimum dollar amount versus a percentage on the performance of a specific film in a market place. House Bill 409 would prohibit blind bidding or blind negotiation, or blind

selling of the product until it has been screened in our market area. It would also prohibit the solicitation of guaranteed film rental. In no way does it limit the film company's ability to solicit firm percentages which guarantee a film company a percentage of what the film does do in a market place.

A distributor of a motion picture is simply any person engaged in the process of renting, selling, or licensing motion pictures to exhibitors. The main opposition to this bill is from the Motion Picture Association of America which is made up of Buena Vista, Columbia, Filmways, Paramount, Twentieth Century Fox, United Artists, MGM, Universal, Warner Bros. and independent film companies. Together they comprise over 95% of the film that is available for showing. Since we are dealing with such large combined financial resources of the MPAA companies, which are in turn owned by other large conglomerates, for example, United Artists is really Trans America and Paramount is really Gulf-Western, exhibitors throughout the nation were unable to get any relief through negotiations with various companies to outlaw within the industry the practice of blind bidding and solicitation of minimum guarantees.

The exhibitors of Montana feel that we should have the right to make a business judgment, upon seeing the product, as to what percentage it is worth in our market place. And, it will also give the opportunity to determine if the subject matter is suitable for the market place, since a theme that is acceptable in New York is not necessarily acceptable in Kalispell. An example of what can happen with blind bidding was the Exorcist for a marathon play in Billings. The film rental was $50,000, the ticket sales only totaled $58,000 and with the other costs of operation we lost about $50,000. They don't guarantee our investment and I don't see why we should have to guarantee theirs.

By forcing the films to be screened, it would also guarantee to the exhibitor that the product has been completed and is ready for release. A current example of this was HEAVEN'S GATE which was supposed to be released at Christmas, and is now tentatively available for April 24. The trade screening would alleviate the blind buying portion with which the exhibitor is faced. The guarantee portion of the bill would prohibit companies from forcing small independent theater owners from having to guarantee a film's success in their market place. He gave examples of other films. To put it more simply, the exhibitors of Montana feel that the film companies are entitled to a percentage that the film earns in our market place but not a guaranteed dollar amount. The trade screening and the no-guarantee portion of the bill will enable the exhibitors to either bid or negotiate on a more equitable and reasonable basis. Copy of examples; EXHIBIT 1.

PEYTON TERRY: Glasgow theater owner. I am a small independent theater owner, and although this bill directly affects only - the larger markets in the state such as Billings, Helena, Great Falls and Missoula, it does have a definite effect on the price the film costs me and countless other small theater owners throughout the state. Under the present methods, our bookers are forced to buy or negotiate for these films sight unseen. I was a franchised new car and truck dealer for over 23 years and never once did I expect a customer to buy a vehicle wihtout knowing what he was buying and was encouraged to inspect it and drive it before he negotiated the price. As things are now in the industry, we as exhibitors are expected to buy a pig in a poke. We are also forced to put up large guarantees well in advance of the play dates and, if the film does not gross the amount of the guarantee, it is our loss. The bill would correct these two grossly unfair practices and put us on more equal footing with the giant conglomerates that control over 90% of the film available. This law was upheld in a supreme court case in Pennsylvania. We feel it is absolutely necessary to pass this bill without any amendments. We would very much appreciate your support in passing this bill.

LONNIE WAGNER: Billings. I ask your support for the bill.

RON REID: Bozeman. HB 409 addresses the problem of motion picture theaters, large and small, having to buy their product sight unseen. They don't have the opportunity to see what they're paying for, before entering into contractural agreements with the film company. Exhibitors are paying large sums of money to guarantee the income of the film to the distribution companies in advance of their playdates. Again, this is expected, without having the opportunity to see the product. The practice of placing guarantees on films is not limited to bidding situations or large metropolitan communities. Oftentimes the film company will require a guarantee from small isolated exhibitors. By placing these guarantees on the small town exhibitor it eliminates the possibility of him playing the film. He cannot afford to pay 75% or more for his product and stay in business.

I feel that the film companies are entitled to a guaranteed percentage of the gross on their picture, but that it is an unfair trade practice to require any exhibitor, large or small, to buy his product by blind bidding, or the forcing of guaranteed film rental. I would be happy to answer any questions.

DAN KLUSMANN: Bozeman. This bill is being introduced only after many years of fruitless negotiation with the film companies. I would hope that as you hear this bill you will keep the following points in mind.

1. The proponents of the bill are the large and small theater exhibitors of Montana.

2. The opponent of the bill is the MPAA representing the film distribution companies such as Gulf-Western, Transamerica Corporation and M.C. A. Universal.

3. It has already passed in 19 states including some of our neighbors like Idaho, Utah, Oregon and Washington.

4. Without the bill it would allow an unfair practice to continue in Montana. Blind bidding and guarantees help reduce the loss or add to the profit that the film companies make on bad films. This is done at the expense of the exhibitor who is tied to terms that are often much higher than the business warrants. Good film almost always makes money for the distributor. A high bid or guarantee on a bad film has put and will continue to put small theater exhibitors out of business.

Like the neighborhood grocery stores that were replaced, your neighborhood theater will disappear too, and be replaced by chains. This is not because the chain can run them better but because they have more "clout" with which to deal with the film companies. A representative of one of the film companies once pointed out that all the theaters in the state of Montana combined to contribute less than .2% of his company's film rentals. Please talk to the theater owner in your area and vote for this bill.

FRED NICHOLS: Helena manager and a member of the Montana Association of Theater owners I am asking for your support in the passage of this bill. Film agreements between exhibitors and distributors are made by bidding for films or by negotiating for films. The important part of the bill is to be able to see a motion picture before entering into the financial agreement with the distributor. This portion states that the film companies have to screen the film in one of the 11 western states in which similar legislation has passed. We feel it is only fair for the product to be seen before a financial commitment is made. A film agreement is often made as much as a year prior to the playdate of the film and after entering into the agreement, the exhibitor cannot negotiate or bid for other film that is available during the same release time. If, as happened with "HEAVENS GATE" a film is suddenly pulled from release shortly before a theater's playdate, that theater is stuck without having screen product for that time period. If, in the case of "HEAVENS GATE", the film buyer had been able to view that film before agreeing to run it, perhaps they would have seen that the film was not worth showing. The theaters who don't buy blind often don't get the product. Another portion of the bill would outlaw the common practice of theaters having to guarantee money in order to buy films. Many film contracts demand a guaranteed amount from the owner. It often keeps the smaller owner from negotiating for certain movies.

B. J. SMITH: A Dillon theater owner. I am concerned over the passage of HB 409. I am certain that you are aware of the unfairness practiced by the film companies of forcing exhibitors to bid a film without having an opportunity to screen the product. You may not be aware of the need for this bill as it relates to the smaller situation such as ours. We are affected by the bidding portion of this bill because the terms for settlement, the percentage of the gross to be paid, is usually determined by the bidding situation and is then carried down through the exhibitors. The guarantee and advance portions apply directly to us. We are, on occasion, required to post a guarantee and an advance on the settlement prior to the film company shipping the print. It hardly seems fair for a small operation such as this to be "loaning" money, interest free to companies as large as Universal Films, and others. We recently played the movie, Any Which Way You Can, and it was necessary for us to "loan" to Warner Brothers $2500 two weeks prior to the date they were to ship the film. This was in the form of an advance. The financial investment to extablish even a small theater operation eliminates the possibility of a fly-by-night operation. The leverage is all on the side of the film companies.

DICK ENSIGN: Missoula. I am in support of this bill.

BOB JOHNSON: I am the manager of the Montana Theater in Miles City. I believe this common sense legislation is in the best interest of, not only the small theaters in Montana, but the general public as well. We are asking for an opportunity to look at a product before we buy it. We are also requesting that the unfair and unrealistic practice of guarantees, front money based on what the film companies think a town might gross, be eliminated. This bill is now law in Utah, Washington, Idaho, Oregon and 19 other states.

DOUG WILLIAMS: Bozeman. I ask your consideration in passing this bill. We need this legislation.

EDWARD (FRED) SHARP: I operate the Wilma 1 and 11 theaters in Missoula and some drive-in theaters as well. Our competition are chain operators so our position as an independent with limited financial resources places us with a blind bidding policy in Missoula as follows:

1. No screenings before pictures are sold to us, an exhibitor, to arrive at a fair market to make a bid.

2. Front money advances of $4000 to $50,000 on the recent movie "STAR TREK" with capital we have to borrown to be paid two weeks in advance of the opening of the playdates.

3. With the bid attraction not grossing to make up losses, and with no adjustment on money advanced to the distributors.

4. Extended playtimes from 4 to as high as 12 weeks or even more, as this is required in all bids even when certain pictures after the second week show no indication to fulfill a long run engagement. The exhibitor is not permitted to pull the picture.

5. Film rentals with highs of 90% not being uncommon and very seldom lower than 70%, 1st week; 60%, 2nd week; 50%, 3rd week; 40%, 4th week and the rest of the entire run at 40%.

Summing it up, with this sight unseen policy, front money guarantees, intolerable playtimes and no adjustment when a picture fails to gross is a red profit for the exhibitor. He gave examples of movies and the costs and how much he had lost on films last year.

This is the first time in almost 60 years of operating theaters in Missoula that we were unable to pay our property taxes and current bills. This bill would give us a fair chance to stay in business.

MYRON BEAN: Choteau movie theater. I have been retired for several years but my wife operates the little theater at Choteau. We try to operate it in a respectable manner. This bill will have considerable effect on the price we will be forced to pay for prints. It is ridiculous that the price for a feature picture is established by the amount that is bid for a print rental, many times before the shooting has actually started. We realize that we are a very small part of the moving picture business but our survival depends to a great extent on what happens to the pictures in the larger locations. We trust that your committee will look favorably on our efforts to hold the line against unreasonable demands by the big producers.

MICHAEL CURNOW: Manager, Plaza Twin Theater, Butte. Small theater owners in Montana are currently forced to bid on motion pictures blindly without first being able to see the product they are buying. Another practice is to make the exhibitor guarantee the film company a prearranged film rent as a condition of showing the film. Often this amount is in excess of the gross receipts the exhibitor receives. We do not feel we should be compelled to unduly risk our limited resources to guarantee the profits of these big corporations, who control 95% of the pictures available to us. Similar legislation is currently law in several states and has been in effect long enough to show that it is not detrimental to film companies, and has worked well.

OPPONENTS:

DON GARRITY: Motion Picture Association of America. House Bill 409 should be defeated. It deals with the distribution and exhibition of motion picture films in the State of Montana and prohibits a long standing business practice in the film industry known as "advance bidding" or "blind bidding". It also prohibits payment of a minimum guarantee on a percentage rental. And, lastly substantial criminal penalties are inserted into the area of civil contract law. This legislation should be defeated for the following reasons.

1. Since this is a dispute between two businesses the Legislature should not become involved. Problems that arise between suppliers and purchasers of any product are best resolved in the free enterprise system. The present system has worked successfully for over 25 years.

2. This bill has absolutely no impact on the little theater owner. The only area in Montana where bidding occurs is Missoula, and that involves only one locally owned theater. EXHIBIT A.

3. Except for the occasional blockbuster picture, guarantees are not required in any area except, on occasion, Missoula. EXHBIIT A.

4. No one is forced to blind bid. Where possible, pictures are trade screened. 46% of the pictures offered in Montana last year were trade screened. On blind bid pictures, exhibitors receive summaries, names of stars and producers plus information in trade publications and film clips at numerous exhibitor trade shows. EXHIBIT B.

5. Blind bidding is currently the subject of negotiation between the exhibitors trade association and the distributors trade association. The legislature should not be used as a bargaining tool by the exhibitors in reaching a negotiated settlement of this dispute. EXHIBIT C.

6. Trade screening may cause pictures to be delayed in playing in Montana. EXHIBIT D.

7. Since 1974, over $30,500,000 has been spent in Montana by the motion picture industry. We are spending money to attract production. Legislation which is hostile to the industry could affect this revenue. EXHIBIT E.

8. This bill has serious constitutional deficiencies, and similar bills are currently the subject of litigation in Pennsylvania, Ohio and Utah.

9. This bill takes away an exhibitor's freedom to blind bid on a picture or offer a guarantee even if he wants to do so.

10. There are no benefits to the movie going public of the State of Montana. If this bill is to protect the public, why not regulate the prices at the concession stand and allow a patron to pay after seeing the movie, if he or she liked the movie? What's fair for theater owners should be fair for the viewing public.

We think the motion picture industry has been a good citizen and is entitled to fair treatment from Montana government. House Bill 409 is not fair--it is punitive and unnecessary.

In conclusion, we believe that Jack Valenti, President of the Motion Picture Association of America, said it best in a speech he gave at the 1978 National Association of Theater Owners convention. "Any time you invite the government into your business to negotiate your contracts, to settle your economic differences with the people in the marketplace, you are beckoning toward a mischief whose harm you cannot imagine at this time." We would be happy to discuss this with you personally and if you have any questions, please contact us.

JAMES T. HARRISON, JR: We have given each of you a booklet and as Mr. Garrity did I will be referring to it occasionally. I would like to respond to some of the remarks made by the proponents. Some of this is just so much talk, that they are at the mercy of the conglomerates. In order for us to make money, our product has to be screened. In most areas the theaters are a monopoly. Last Christmas our company produced 14 films for the Christmas market. If you own the only theater in town then you are not at the mercy of anybody. EXHIBIT A is an example of the amount paid in Montana. You will find that many deals are adjusted down when a film does not do well. None of the small town theaters blind bid. By the time they negotiate for a film that film has already played in Billings or Great Falls. Mr. Warner buys the films for the majority of the theaters in the State of Montana.

We talk about how important it is for them to see the movie, but the owners do not see the screenings that we have in Salt Lake City. At our last screening only five people showed up to see that movie. None of the theater owners in Montana attend the screenings. Obviously if you paid $125 for a film you aren't going to go to Salt Lake for a screening. We do not have outrageous charges. We are in the business of making motion pictures for money. We lose

tons of money on lots of pictures. Look at how much was lost on HEAVENS GATE. We have yet to realize a nickle on that film. We do not pay the freight, the theater owner pays the freight. I would like to refer for just a moment to Mr. Warners letter. He went on to mention the film EXORCIST and Mr. Warners loss on it. We are entitled to justice and fair treatment by this committee. He went on to mention other films that had been made in Montana. We don't like this bill. We think it is an unnecessary, unrealistic intrusion by government into our business. We will take into account who likes us or doesn't like us.

He read from the Democratic Platform the section on regulatory reform, and went on to talk directly to the Republican members on the committee. He then went on to talk about competition and that this bill would make it much more difficult for competition. This bill does nothing for the consumers. The motion picture industry is a substantial contributor to the Montana economy. We think that entitles us to fair treatment from Montana government. We can always take our business elsewhere.

ANN GRUPP also representing MPAA. I want to make a couple of points here. I don't think we have heard what blind bidding is not. For one thing, it is not prevalent in Montana. 54% of the pictures shown in Montana were trade-screened in Montana. I think another thing that blind bidding is not, is that it is not really blind. The theater owner has a lot of information on a film. She held up and passed around examples of the type of brochures sent to the theater owners. She discussed movies made from books and that theater owners knew what they were getting, when they buy a film. She went on and explained product reel and dailies and trailers and the kinds of campaigns planned for a movie. She read a letter from an Ohio owner opposing this type of legislation.

The key elements in the success of a film are the people, the director and the theme. Another thing blind bidding is not, is that it is not engaged in by more than a handful of owners. Most of them are buying a picture that has already been seen. The only place this takes place is in Missoula, and that is because of the competition. She went on to explain the difference between bidding and buying. If a film does not do well the contract is negotiated down. She made several comments about the figures the proponents had quoted as their losses. I also want to point out that this practice of blind bidding is not something new. In 1968 we discussed the problem of blind bidding, and we have continued to discuss it as late as 1975.

She discussed the Justice Department and the Consent Decree. The court found that the companies have occasionally had to have blind bidding. There are certain times that you do not have control. We are asking that you allow blind bidding on three pictures a year.

We would like to offer at this time a proposed amendment which would allow each company to blind bid up to three pictures a year. 26% of the theater owners in the United States belong to the National Association of Theater owners. She elaborated on trade screening and how it works. It doesn't seem to me that anyone is going to benefit from this bill. This kind of legislation would tend to create monopolies and thus raise the prices to consumers. We feel this is totally unreasonable government regulation. Doing away with the practice of combining minimum prices with a percentage would make it tougher for new theater opeartors to get started. Theaters have all the information they need to buy sight unseen and film makers often adjust contract prices down if a movie bombs because they want the theater owners to be happy.

CHAIRMAN HAZELBAKER commented on the fact that opponents of House Bill No. 409 mentioned the political overtones of the committee, implying that the committee used partisan politics in conducting their actions on legislation. Mr. Hazelbaker went on and said that he resented this implication and that as long as he had been serving in the legislature he had never witnessed such an exhibition before.

MR. GARRITY introduced William Krepenhopper from Denver, representing Columbia Pictures and Tom Keegan, representing the Motion Picture Association and said they would be available to answer questions.

MR. HARRISON representing the Motion Picture Association of America continued with testimony. This bill dictates new terms for contracts between motion picture distributors and theater owners and provides that the distributor and theater owner cannot agree among themselves to waive any of those terms. The bill makes it a crime, punishable by up to six months in jail and a fine of up to $500, for a theater owner or a motion picture distributor to violate any of its provisions, on the bottom of page 2. Line 2, page 3 is very vague. He passed out a chart to the committee showing peak periods of attendance. EXHIBIT 2. You do not release a movie like "GODZILLA" on Easter. He gave other examples. He elaborated on who paid for what. Someone has to make up the deficiency and the time lost.

There is a difference between actual gross and the gross of the theater, such as concessions. The monopolies are well represented here. In addressing the criminal violations, as an attorney, they ought to be amended out of here. He read from the Republican Platform, the section concerning "fine, threats and harassment" and commented that the problem is that this bill contains a criminal penalty. He gave examples that if you make certain kinds of

contracts you are a criminal. If you have a criminal statute in an area of contract law it seems an invitation to file harassment suits. House Bill 409 is an unwarranted government interference in the contracting practices of private industry. Motion picture production companies have spent over 30.5 million dollars in filming movies in Montana since 1974. The movie "HEAVENS GATE" which to date has been a financial disaster for its producer, spent some 17 million dollars in Montana. Theater owners are accusing the film makers of strong arm tactics when in most Montana markets the theaters have a monopoly situation. "If you want to play basketball they are the guys with the gymnasium. Who will pay the cost of interest on a film while you sit around and wait for a trade showing. It won't be the members of this, the theater owners, association. It will be the public."

QUESTIONS FROM THE COMMITTEE:

SENATOR REGAN: I have heard a lot of testimony about blind bidding and yet both sides agree there is very little of this. On page 3, lines 7 through 12, I would like the industry to respond. Do you have any trouble with it.

ANN GRUPP: We do not feel that the state should be able to force a guarantee. When a new theater comes into a town the company will look at the percentages. The guarantee is payable anywhere from 4 to 14 days before the picture opens.

SENATOR REGAN: It seems to me there should be the guarantee or the rental, not both.

ANN GRUPP explained the difference between the guarantee versus the minimum film rental and how it works. An owner would only have to pay the minimum $125 rental, and the percentage if he makes more than 35% on the gross.

SENATOR BLAYLOCK: You say there is some 20 states that have similar legislation. Has the company faired badly in those states.

MR. GARRITY mentioned some of the difficulties that are now being seen in those states.

SENATOR LEE: It seems to me that what we are looking at is that there has to be a lag in here.

ANN GRUPP: Yes, there is a delay. The films are available in Idaho and also in Utah, usually before they are available here.

CHAIRMAN HAZELBAKER: Was the amendment cleared with you, Mr. Keyser.

MR. KEYSER: No, it was not. We do not want an amendment.

SENATOR REGAN: I cannot let the people from California go home with the feeling that you have. I cannot remember a meeting that has been as partisan as this one has today. I never heard that before and I don't want you to think that that is the way we operate here in Montana.

REPRESENTATIVE KEYSER: I really cannot believe the smoke that has gone on here and things that have been said. I feel blind bidding is as important as other parts of the bill. 56% of the films in Montana do come under blind bidding. Columbia Pictures has not treated Mr. Warner too well. We are talking about a whole industry and the personal attacks on Mr. Warner are not welcome here. We don't need an amendment. They don't trade screen pictures that have already been shown. They know what trade screening is, and there is always bidding and negotiations on guarantees and percentages. We want the theater owner to be able to take one or the other but not both. He commented also about the remarks made by Mr. Harrison. He also talked about the trading up and the contracts. It is true that the money is not necessary until 14 days before but they have tied up a date on the theater because of the contractual agreement. He also talked about the delay that had been referred to and said that that was not true. In the states that have blind bidding it is just the same. What if the date is tied up and the film is not made. They have passed up the chance to buy up some other films.

The Fair Trade Practice Act already has criminal penalties and Mr. Harrison knows that. We are not trying to stop any business between these people. Any existing contracts will stay in effect.

With some other general discussion the hearing closed on House Bill No. 409.

The meeting adjourned at 12:05 noon.

Frank W. Hazelbaker, Chairman

Mary Ellen Connelly, Secretary

ROLL CALL

BUSINESS and INDUSTRY COMMITTEE

47th LEGISLATIVE SESSION -- 1981 Date 3/12/81

NAME	PRESENT	ABSENT	EXCUSED
Goodover, Pat - Vice Chairman	✓		
Hazelbaker, Frank - Chairman	✓		
Blaylock, Chet	✓		
Boylan, Paul	✓		
Dover, Harold	✓		
Kolstad, Allen	✓		
Lee, Gary	✓		
Regan, Pat	✓		

Each day attach to minutes.

DATE 3/12/81

COMMITTEE ON H. BILL NO. 409

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Oppose
Larry Wagner	Billings Theatres	✓	
Jon Reid	Bozeman Theatres	✓	
Bob Sigs	Missoula Theatres	✓	
Warren Miller	Dillon Theatres	✓	
Edward Sharp	W.A. Simons Co. Wilma Theatre Mtsla	✓	
Fred Mitchell	Helena Theatres	✓	
Diane Smith	Movie Haus - Laurel	✓	
Joey Smith	Movie Haus - Laurel	✓	
Forrest C Smith	Commonwealth Theatres Mtsla	✓	
Larry Flesh	Interstate Amusement Inc.	✓	
Don Campbell	Elton Theatres Lewistown	✓	
Donna Campbell	" "	✓	
Richard C Bagley	Liberty Theatre Wolf Point	✓	
Sumner H. Ryder	Anderson Theatre Co. Kalispell	✓	
Jay Wallace	TOI Theatres - Mtsla	✓	
Don Klussmann	TOI - Bozeman	✓	
BJ Smith	Big Sky Cinema Dillon	—	
Becky Akkerstad			
Debbie Savage	Roxy Theatre - Hamilton	✓	
Jim Bagley	" " "		
[illegible]	Warren Musselshell	✓	
[illegible]	TOI	✓	
[illegible]	Servant Theatre - Glasgow	✓	
Tom Hines	Kalispell Theatres	✓	
Tom Keegan	Motion Picture Association		✓
Nick Bergen	Columbia Pictures		✓

(Please leave prepared statement with Secretary)

DATE 5/12/81

COMMITTEE ON H BILL NO. 409

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
[illegible]	MATO	X	

(Please leave prepared statement with Secretary)

Name R Gropp DATE: 3/12/81

8480 Beverly Blvd.

213/653-2200

WHOM? Motion Picture Assn.

WHICH PROPOSAL: H 3409

SUPPORT? _____ AMEND? _____ OPPOSE? ✓

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Don GARRITY DATE: 3-18-81

ADDRESS: 1313 11TH AVE. - HELENA, MT

PHONE: 442-5711

REPRESENTING WHOM? MOTION PICTURE ASS'N OF AMERICA

APPEARING ON WHICH PROPOSAL: HB 409

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Thomas E. Hines DATE: 3-12-81

ADDRESS: Box 977 Kalispell, MT

PHONE: 257-0307/755-4290

REPRESENTING WHOM? Anderson Theatre Co, Inc.

APPEARING ON WHICH PROPOSAL: HB409

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Clayton Terry DATE: 3/18/81

ADDRESS: Box 391 Glasgow, Mont.

PHONE: 228-4973

REPRESENTING WHOM? Sunset Theatre

APPEARING ON WHICH PROPOSAL: HB 409

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Tim Warner DATE: 3/17/81

ADDRESS: 3400 Wagon Wheel

PHONE: 567-2124

REPRESENTING WHOM? Warner Marketing

APPEARING ON WHICH PROPOSAL: #409

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Jim Bailey DATE: 3/12/81

ADDRESS: Box 553, Hamilton, MT. 59840

PHONE: 363-2336

REPRESENTING WHOM? Roxy - Starlite Theatres

APPEARING ON WHICH PROPOSAL: H.B. 409

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Robert Johnson DATE: 3/12/81

ADDRESS: Miles City, MT

PHONE: 232-2958

REPRESENTING WHOM? TOI

APPEARING ON WHICH PROPOSAL: HB 409

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bob Sivin DATE: Mar. 10, 81

ADDRESS: Wilma Bldg., Missoula 59801

PHONE: 543-4166

REPRESENTING WHOM? Missoula Theatres

APPEARING ON WHICH PROPOSAL: H. B. 409

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Richard Snyder DATE: 3-12-81

ADDRESS: Wolf Point, MT

PHONE: 653-2089

REPRESENTING WHOM? Liberty Theatre

APPEARING ON WHICH PROPOSAL: HB 609

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Don Campbell DATE: 3/12/81

ADDRESS: 219 W. Main

PHONE: 8-9509

REPRESENTING WHOM? Elta Theatres

APPEARING ON WHICH PROPOSAL: HB. 409

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: LARRY FLESCH DATE: 3/12/01

ADDRESS: 822 HILL SHELBY, MONT

PHONE: 434-2468

REPRESENTING WHOM? INTERSTATE AMUSEMENTS INC.

APPEARING ON WHICH PROPOSAL: HB 409

DO YOU: SUPPORT? YES AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Dion Smith DATE: 3/12/81

ADDRESS: 419 W. 8th St.

PHONE: 628-8393

REPRESENTING WHOM? Marie Nans - Laurel

APPEARING ON WHICH PROPOSAL: HB 409

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

AMENDMENT TO HOUSE BILL 409

On Page 3, line 6:

After the word "bidding."
Insert: Notwithstanding the foregoing, a distributor may blind bid no more than three pictures per year.

EXHIBIT "1"

March 6, 1981

Senator Pat Goodover, Vice Chairman
Business & Industry Committee
Montana Senate
Helena, MT 59601

Dear Senator Goodover:

I am writing to you on behalf of the Montana Association of Theatre Owners, as the Chairman of the committee for the passage of H.B. #409, An Act Establishing Fair Trade Practices for the Distribution and Exhibition of Motion Picture Films.

As a Film Buyer who represents several of the independent theatre exhibitors in the State, I am very aware of both the blind bidding and the guarantee portions of the current practice in selling film and what it is doing both to the small and large exhibitors in the State of Montana.

We are in a real David & Goliath struggle because not only is the independent theatre owner up against companies such as Gulf+Western, Transamerica, Warner Brothers, Buena Vista, Columbia, Filmways, MCA-Universal, etc., but their combined strength in the motion picture business is formed under MPAA, or Motion Picture Association of America. Together they control approximately 95% of the film available to the exhibitors for purchase.

The current practice in the industry is to force exhibitors to buy totally blind either by bidding for the product or by negotiating for it. The totally blind buying substantially influences and hurts the larger markets in Montana such as

Billings, Great Falls, Kalispell, Missoula, Helena, and Butte but it also has a very significant impact on the price to the smaller theatres throughout Montana since the price of film to the small towns is substantially based on the larger markets in the area.

What a portion of the Bill basically states is simply that they have to screen the motion picture in one of the eleven Western states that currently has anti-blind bidding legislation. It is simply to give the exhibitors in Montana the opportunity to see the product before they have to make financial arrangements as to the purchase of that product. Ours is probably one of the few industries that totally blind buying is in effect.

The other major portion of the Bill is to outlaw film companies from demanding guarantees up front for motion picture product. This portion of the Bill is vital both for the large and small towns in the State and I am enclosing some examples as to the impact that the guarantee portion can have on the price of motion pictures.

The first example is that in Billings, Montana, Theatre Operators, Inc. put up a guarantee of $50,000 on THE EXORCIST. The picture only grossed $58,000. The following is a chart showing what we should have paid on a percentage basis.

Weeks 1-3	Gross $35,000 x 70% =	$24,500
Weeks 4-6	Gross $12,000 x 60% =	$ 7,200
Weeks 7-9	Gross $11,000 x 50% =	$ 5,500
	Total % Payment	$37,200 or 64%

If we had just paid the percentage, the film rental would have been 64% for the 9-week period. However, because of the guarantee, the film rental for the 9-week period was 87%. Also, in addition to the $12,800 loss in film rental, we also lost our weekly house expense of $3,000, or a total of $27,000 for the 9-week period bringing the total loss to approximately $50,000 on a picture which Warner Brothers Communications made millions.

A second example is that in Bozeman, Montana, we paid a $25,000 guarantee on THE EXORCIST and the picture only grossed $23,000. The following chart shows the percentage we should have paid.

Weeks 1 & 2	Gross $14,000 x 70% =	$9,800
Weeks 3 & 4	Gross $ 6,000 x 60% =	$3,600
Weeks 5 & 6	Gross $ 3,000 x 50% =	$1,500
	Total % Payment	$14,900 or 65%

However, because we had paid a guarantee on the motion picture, of $25,000, we ended up paying 109% in film rental.

A third example is that in Missoula, Montana we paid a guarantee of $10,000 on THE TRIBUTE. In three weeks the picture only grossed $6800. The following chart shows the percentage we should have paid.

Weeks 1 & 2	Gross $5,000 x 70% =	$3,500
Week 3	Gross $1,800 x 60% =	$1,080
	Total % Payment	$4,580 or 68%

However, because we had paid a guarantee of $10,000 on the picture, we ended up paying 147%.

In some small communities for which I buy such as Cut Bank, Conrad, Shelby, Hamilton and Miles City, it is not uncommon for the film company to place a $1000 guarantee on a motion picture. If a motion picture only grossed $1500, the picture would normally be settled on a percentage basis at 35% or $525. However, because of the guarantee portion of the contract the film rental percentage changes to 67%.

As exhibitors in the State, we feel that the film companies are entitled to a guaranteed percentage of the market place. However, we do not feel it is our responsibility that they are entitled to a guarantee regardless of the performance of the picture in that market area.

There are several factors that can alter the performance of a motion picture in the Montana market - weather, other activities in the town, the theme of the motion picture might not be popular with the movie patrons in Montana, etc.

When you consider the size of Gulf+Western, Trans America, etc., expecting the independent exhibitors, whose financial resources are very limited to guarantee profits in the market place, we feel this is totally unreasonable and an unacceptable practice in the State.

Also, another factor that the film companies use the guarantee for is that it gives them the ability to eliminate several small theatre exhibitors from playing their product on the basis that if the small theatre exhibitor will not pay the guarantee, they will not sell them the motion picture; thereby giving the distributor a convenient excuse for not serving the town.

In larger situations, it is not uncommon for the film company to bid or negotiate for a picture as much as a year in advance. Then, upon signing the contract, the exhibitor is excluded from bidding or negotiating for other product that is available for that play time, only then to have the film company decide to pull the picture from the market place at that time.

An example of this is that we were scheduled to play HEAVEN'S GATE in Missoula and Billings at Christmas and the film company notified us in the latter part of November that the picture would not be available even though we had already committed the screen play time. HEAVEN'S GATE is a current example; however, this is very common practice and includes such pictures as the original SUPERMAN or APOCALYPSE NOW.

The bill is currently law in Utah, Washington, Idaho and Oregon and it is working very well. In addition to these states in our area, it is law in a total of nineteen (19) states plus the territory of Puerto Rico. The law has been

in effect in some of these states as much as three or four years and it is working extremely well for both the large and small towns and it has not had an adverse impact on the exhibitors of those states nor has it been financially detrimental to the film companies since some of the best stocks on the market are film company stocks these past few years.

This bill has the total support of every exhibitor in the State of Montana even though some sections of it were stricken by the lobbying efforts of the MPAA in the House. We feel, as exhibitors in Montana, it is absolutely necessary that this Bill not be further ammended even though we do realize that there is a substantial lobbying effort on the part of the MPAA to do so.

I am sure that you will be hearing from your local exhibitors regarding their support of the Bill, but the reason for my lengthy letter is to help you more closely understand various facets of the Bill and why its passage is necessary to the survival of the theatre owners of Montana.

Thanking you in advance for your time and consideration.

Kindest regards,

Tim C. Warner
Montana Assoc. of Thea. Owners

TW/bp

EXHIBIT "2"

within the United States.

The accompanying graph depicts the weekly b.o. gyrations. Weekly data over the 12-year period 1969-80 were utilized, and ticket price inflation has been removed in order to eliminate distortion. A "normal" 52-week year has been utilized for standardized comparisons.

The following comments should be kept in mind when interpreting the graph:

● The final week of a year — that is, the week containing New Year's Day — has been given an arbitrary numerical value of 1.0. (It could be assigned *any* numerical value, but using 1.0 makes a convenient benchmark reference when comparing weekly b.o. performance throughout the following year until business again climbs back in late December to the reference point.)

● The weekly b.o. profile within a year represents *total* boxoffice for *all* films. Thus, in any given season, the various peaks and valleys will either be more extreme (or less so), depending on who has the hit (or flop) films in release at that time and from which distributors.

● The numbers on the left vertical scale represent *statistical* orders of magnitude relative to the benchmark value of 1.0. Thus, in a particular year, the relative weekly values corresponding to a selected week might be higher or lower; however, the *shape* of the year's business would not differ markedly. (By using 12 years of data, good years and bad years

● The post-Easter weeks represent another, and deeper, b.o. sag. Memorial Day weekend business soars, but b.o. then rapidly (though briefly) declines until the waves of summer vacation school closings and business vacations periods propel business to another relative high for the year around July 4.

● After July 4, summer business experiences a slight midsummer decline before rising again in late July-early August, followed by another mild sag until the Labor Day weekend climax of that season. (Labor Day week is consistently defined as the last week of August, since it properly belongs at the end of the summer season.)

● The sharp September slump bottoms out late in that month, followed by a stable, slightly rising trend through October and November. But just before Thanksgiving week, there's a tapering off before the holiday upturn.

● Next come the worst weeks of the year — early December, when business has fallen to its lowest relative point. This situation changes quite markedly as Christmas approaches, with b.o. levels tripling between the second week of the month and New Year's Day week.

● An interesting pattern of oscillation is evident, in that a straight ascending line may be drawn between the successive seasonal highs, and a straight descending line can be drawn

weeks since Jan. 1 and/or the length of time between the leading and trailing edges of an intra-year seasonal swing. (It may just be the accident of the calendar, of course, but the empirical evidence invites further investigation into a recurring phenomenon which manifests such an intriguing, if rough, periodicity.)

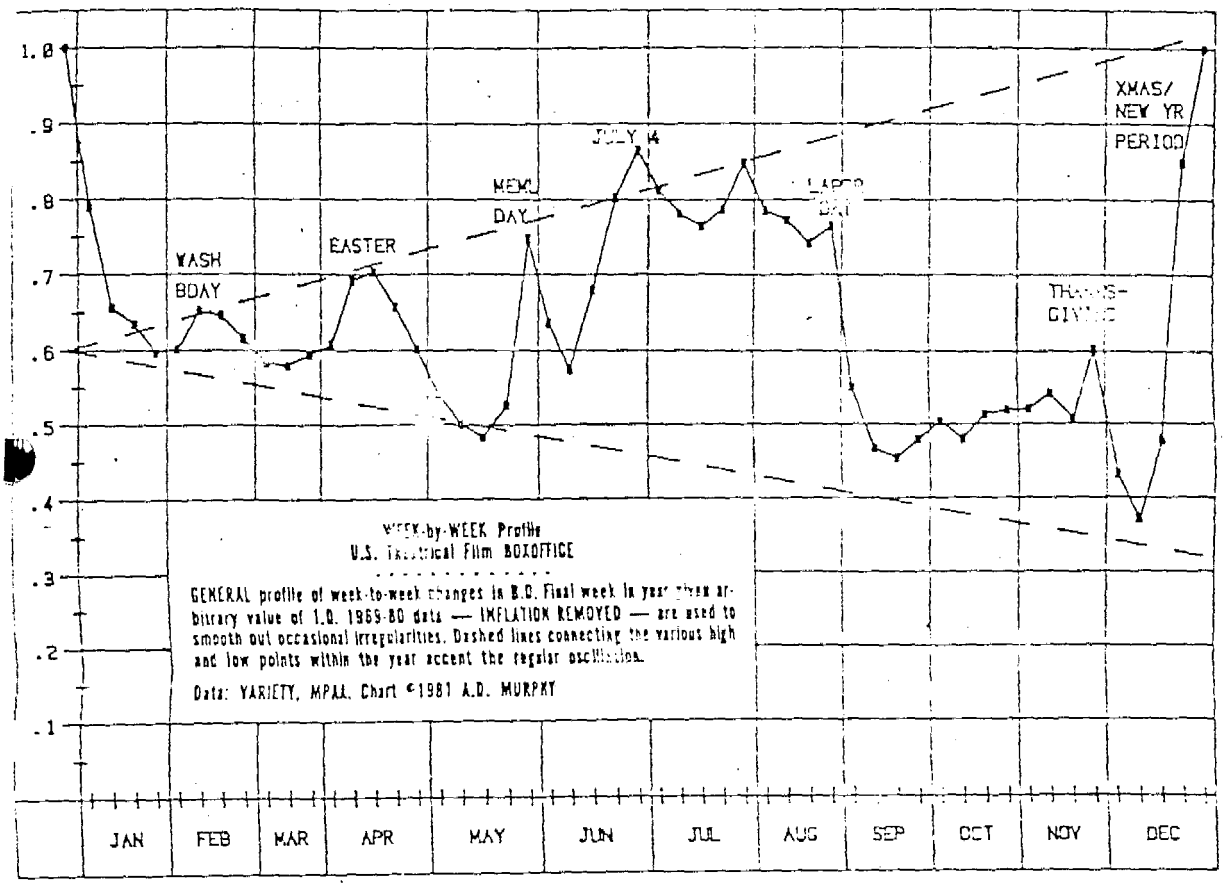
● In eye-balling the relation of any week's business to the *reference* week, it's a simple matter of noting the scale. For example, Easter period business is at a level approximately 70% of year-end holiday business; the early-December low is approximately 35% of what business will be two-to-three weeks later.

● In figuring out the relation between two periods within the year, the arithmetic is still simple. For example, the mid-May seasonal low is approximately 50% of New Year's business (0.5 on the scale), and the Memorial Day weekend business rises to about 75% of New Year's b.o. (0.75 on the scale). So, the jump between mid-May and Memorial Day is about 50% (i.e., going from 0.5 to 0.75 represents an upward move of 0.25, or half of 0.5).

Similarly, the drop between Labor Day week (about 0.77 on the scale) to the September bottom (0.45 on the scale) is on the order of 42% (from 0.77 to 0.45 is a drop of 0.32 from 0.77, about 42%).

● In drawing conclusions from this recurring annual pro-

(Continued on Page 12, Column 4)



Movie Haus

D & D ENTERPRISES

BOX 546 - 13 FIRST AVE. - LAUREL, MT. 59044 - (406) 628-8393

Dione Smith

Donna Kilpatrick

March 9, 1981

Senator Frank Hazelbaker
Montana Senate
Helena, Mt. 59601

Dear Senator Hazelbaker:

I am writing you to ask for your support of HB-409 prohibiting blind bidding in theatres.

As a small theatre owner, I feel this practice is grossly unfair. No other business that I know of is asked to bid on something before it can be seen. This is detrimental to the quality of movies we have available as well as detrimental to the theatre owner as to how we have to run our business.

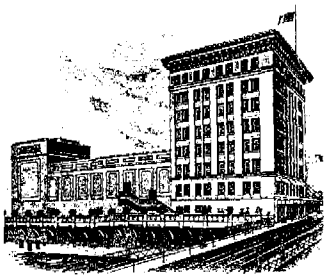
In fighting this practice we are up against the giants of the business world and the only hope we have is to have a law on our side.

Sincerely,

Dione Smith

Dione Smith

HB409
yes



GENERAL OFFICES: WILMA BUILDING
P.O. BOX 7277
MISSOULA, MONTANA 59807
TELEPHONE: (406) 543-4166

FILM BUYING AND BOOKING OFFICES:
W.A. SIMONS AMUSEMENT CO.
WALKER THEATRE SERVICE
350 South 4th East
Suite 222 W
Salt Lake City, Utah 84111
(801) 521-0335

EDWARD SHARP
PRESIDENT

ROBERT V. SIAS
EXECUTIVE VICE-PRESIDENT

SHARP-SIAS ENTERPRISES:

HANSON-SIMONS CO.

OWNING AND OPERATING THE WILMA BUILDING, MISSOULA, MONTANA

W. A. SIMONS AMUSEMENT CO.

AND AFFILIATED COMPANIES

OWNING AND OPERATING THE W.A. SIMONS
CIRCUIT OF MOTION PICTURE THEATRES
MONTANA AND IDAHO

March 9, 1981

Hon. Pat Goodover
Montana State Senate
Helena, MT 59601

Dear Senator Goodover:

We are independent Montana motion picture exhibitors who operate four theatres in Missoula and whose company has paid taxes in Montana for the past 60 years.

We are virtually being put out of business by the tyranny of powerful film companies who require us to bid for product without seeing it (blind bidding) and who demand exorbitant guarantees and terms.

Please let us stay in business.

Please support H. B. 409, an act establishing fair trade practices in the distribution and exhibition of motion picture film.

Gratefully,

Robert V. Sias

ROXY-STARLITE THEATERS J BAILEY
PO BOX 553
HAMILTON MT 59840

western union Mailgram®

UNITED STATES POSTAL SERVICE U.S.MAIL

4-022262S068 03/09/81 ICS IPMMTZZ CSP HELB
4063632336 MGM TDMT HAMILTON MT 78 03-09 1238P EST

HB 409
yes

SENATOR PAT GOODOVER
STATE CAPITOL
HELENA MT 59601

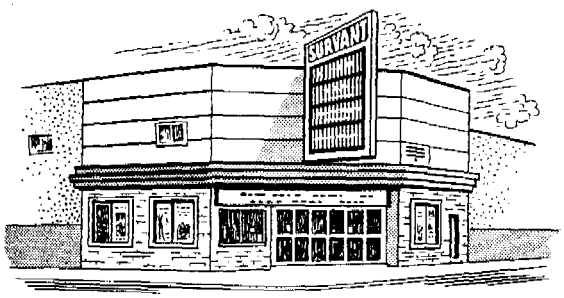
DEAR SENATOR AS A SMALL TOWN THEATER OWNER I WOULD VERY MUCH APPRECIATE YOUR CONSIDERATION OF HOUSE BILL 409 AT THE HEARING TO BE HELD ON THURSDAY MARCH 12

THIS BILL IS HIGHLY IMPORTANT TO ME AS A SMALL THEATER OWNER AS IT COULD WELL MAKE THE DIFFERENCE OF SURVIVAL IN THE FUTURE I THANK YOU VERY MUCH FOR YOUR CONSIDERATION SINCERELY
JIM BAILEY OWNER MANAGER ROXY-STARLITE THEATERS HAMILTON MT

1241 EST

MGMCOMP MGM

HB 409



SURVANT THEATRE
WEST DRIVE-IN THEATRE
Box 391 — Ph. (406-228-2932)
GLASGOW, MONTANA 59230
MARCH 10, 1981

SENATOR PAT GOODOVER
STATE CAPITAL
HELENA, MT 59601

DEAR SENATOR,GOODOVER

I AM WRITING TO ENLIST YOUR SUPPORT IN PASSING HB No. 409, AN ACT TO ESTABLISH FAIR TRADE PRACTICES FOR THE DISTRIBUTION AND EXHIBITION OF MOTION PICTURE FILMS.

I AM A SMALL INDEPENDENT THEATRE OWNER, AND ALTHOUGH THIS BILL DIRECTLY EFFECTS ONLY THE LARGER MARKETS IN THE STATE SUCH AS BILLINGS, HELENA, GREAT FALLS AND MISSOULA, IT DOES HAVE A DEFINITE EFFECT ON THE PRICE THE FILM COSTS ME AND COUNTLESS OTHER SMALL FAMILY THEATRE OWNERS THROUGHOUT OUR STATE.

UNDER THE PRESENT ESTABLISHED METHODS, OUR BOOKERS ARE FORCED TO BUY OR NEGOTIATE FOR THESE FILMS SIGHT UNSEEN. IN THE INDUSTRY, IT IS KNOWN AS BLIND BIDDING. ALL THAT HB No. 409 DOES IS TO GIVE THE EXHIBITORS AND THEIR BOOKERS A CHANCE TO SEE THE FILMS BEFORE THEY NEGOTIATE THE TERMS.

I WAS A FRANCHISED NEW CAR AND TRUCK DEALER FOR OVER 23 YEARS AND NEVER ONCE DID I EXPECT A CUSTOMER TO BUY A VEHICLE WITHOUT KNOWING WHAT HE WAS BUYING AND WAS ENCOURAGED TO INSPECT IT AND DRIVE IT BEFORE HE NEGOTIATED THE PRICE. AS THINGS ARE NOW IN THE MOTION PICTURE INDUSTRY, WE, AS EXHIBITORS ARE EXPECTED TO BUY A PIG IN A POKE. WE ARE ALSO FORCED TO PUT UP LARGE GUARANTEES WELL IN ADVANCE OF THE PLAY DATES AND, IF THE FILM DOES NOT GROSS THE AMOUNT OF THE GUARANTEE, IT IS OUR LOSS.

THIS BILL WOULD CORRECT THESE TWO GROSSLY UNFAIR PRACTICES AND PUT US ON MORE EQUAL FOOTING WITH THE GIANT CONGLOMERATES THAT CONTROL OVER 90 PERCENT OF THE FILM AVAILABLE TO US AS EXHIBITORS. THIS BILL IS PRESENTLY LAW IN THE NEIGHBORING STATES OF WASHINGTON, IDAHO, UTAH AND OREGON. THIS LAW WAS ALSO UPHELD IN A SUPREME COURT CASE IN PENNSYLVANIA. THIS BILL IS SUPPORTED BY THE MONTANA ASSOCIATION OF THEATRE OWNERS, WHICH REPRESENTS EVERY THEATRE OWNER IN THE STATE.

WE FEEL IT IS ABSOLUTELY NECESSARY TO PASS THIS BILL WITHOUT ANY AMENDMENTS.

WE REALIZE THAT THE M.P.A.A. IS MOUNTING A POWERFUL AND VERY COSTLY LOBBYING EFFORT TO DEFEAT US. HOWEVER, I MIGHT POINT OUT, THAT WHILE THIS BILL WAS PASSING THE HOUSE IT WAS SUPPORTED BY A LARGE REPRESENTATION OF THEATRE OWNERS WHO ARE ALL MONTANANS, TAXPAYERS AND VOTERS IN OUR STATE. MEANWHILE, OUR OPPOSITION DID NOT HAVE THE SUPPORT OF ONE MONTANA CITIZEN EXCEPT FOR TWO HELENA ATTORNEYS AND SEVERAL HIGH-PAID LOBBYISTS FROM OUT OF STATE.

MYSELF, ALONG WITH COUNTLESS OTHER THEATRE OWNERS THROUGHOUT THE STATE WOULD GREATLY APPRECIATE YOUR SUPPORT IN PASSING THIS BILL.

THANKING YOU VERY KINDLY FOR YOUR TIME AND CONSIDERATION, I REMAIN,

YOURS TRULY,

Peyton Terry

PEYTON TERRY

ANDERSON
THEATRE CO.
P.O. Box 977
Kalispell, Montana 59901

March 2, 1981

Hon. Pat. Goodover
Capital Station
Helena, MT 59601

Senator:

My family has operated the movie theatres in Kalispell for over 60 years. Blind bidding [redacted] and it's aftermath are threatening the viability of large and small operators across the nation.

I will not go into the details of the problem for there are more eloquent spokesman for the position than myself.

I urge you to carefully consider HB 409 and the tremendous outside effort being put forth to defeat it. If you understand the practice you should be able to support HB 409.

Thank you,

Thomas E. Hines

Thomas E. Hines

THEATRE OPERATORS INC.

ADDRESS REPLY TO:
THEATRE OPERATORS, INC.
General Offices
P. O. Box 1629
Bozeman, Montana 59715

Phones: Film Dept. 587-1251
Accounting 586-1571

March 9, 1981

Senator Pat Goodover
State Capital Building
Helena Montana
59601

Re: H.B. #409, An Act Establishing Fair Trade Practices For The Distribution and Exhibition Of Motion Picture Films.

I would like to ask your support in passing the above bill. House Bill #409, addresses the problem of motion picture theatres, large and small, havng to buy their product sight unseen. They don't have the opportunity to see what they're paying for, before entering into contractural agreements with the film distribution companies. Theatre exhibitors are also paying large sums of money to guarantee the income of the film to the distribution companies in advance of their playdates. Again, this is expected, without having the opportunity to see the product.

The practice of placing guarantees on films is not limited to bidding situations or large metropolitan communities. Often times the film companies will require a guarantee from small isolated exhibitors, making it virtually impossible for them (the exhibitors) to exhist. By placing these guarantees on the small town exhibitor it eliminates the possibility of him playing the film. He cannot afford to pay 75% or more for his product and stay in business.

I feel that the film companies are entitled to a guaranteed percentage of the gross on their picture, but that it is an unfair trade practice to require any exhibitor, large or small, to buy his product by blind bidding, or the forcing of guaranteed film rental.

Your cooperation in passing H.B. #409, without deletions will help to correct these unfair practices. I would be happy to respond to any questions you may have regarding this all important bill, and I'm looking forward to meeting with you this week in Helena.

Sincerely,

Ron Reid, City Mgr.
Theatre Operators Inc.
Bozeman, Mt. 59715

March 9, 1981

MEMBERS OF THE MONTANA STATE SENATE
HELENA, MT 59601

Dear Senator:

H.B. #409 'AN ACT ESTABLISHING FAIR TRADE PRACTICES FOR THE DISTRIBUTION AND EXHIBITION OF MOTION PICTURE FILMS' will be coming before you in the near future for a vote.

This bill which would forbid the practice of 'blind bidding' is a bill that is in the interest of Montanans and is being introduced to the legislature only after several years of fruitless negotiation with the film companies.

As you are approached by the ~~six~~ 3 lobbyists hired by the Motion Picture Association of America I would hope that you would keep the following points in mind:

1. The proponents of the bill are the large and small theatre exhibitors of Montana.

2. The opponent of the bill is the MPAA representing the film distribution companies such as Gulf+Western, Transamerica Corporation and M.C.A. Universal.

3. THE BILL IS GOOD LEGISLATION! It has already been passed in 19 states including some of our neighbors like Idaho, Utah, Oregon and Washington. The Montana House of Representatives also passed it by a large margin.

4. If the bill were to be defeated it would allow an unfair practice to continue in Montana. Blind bidding and guarantees help reduce the loss or add to the profit that the film companies make on 'bad' films. This is done at the expense of the exhibitor who is tied to terms that are often much higher than the business warrants. 'Good' film almost always make money for the distributor. A high bid or guarantee on a 'bad' film has put and will continue to put some small theatre exhibitors out of business.

Like the neighborhood grocery stores that were replaced by Supermarket chains, the small local cafes who gave way to the 'fast food' chains... so shall your neighborhood theatres disappear and give way to theatre chains. This is not because the chain can run them better but because they have more 'clout' with which to deal with the film companies. I find it incomprehensible that a proprietor of a small theatre in a Laurel or a Dillon has an advantage over Transamerica Corporation. Even a chain such as TOI fades in comparison to the Conglomerates controlling the film Companies. A representative of one of these film companies once pointed out that all the theatres in the state of Montana combined to contribute less than .2% of his company's film rentals.

THEATRE OPERATORS INC.

ADDRESS REPLY TO:
CIRCUS TWIN THEATRE
3010 NO. MONTANA
P. O. BOX 5599
HELENA, MONTANA 59601
PHONE 406-442-6328

Senator

Montana Senate
Helena, Montana 59601

Dear Senator:

As the manager of the Helena, Montana movie theatres and as a member of the Montana Association of Theatre Owners, I am writing to urge your support for the passage of House Bill #409, which will soon be heard by the Business and Industry Committee of the Senate. This bill is an Act Establishing Fair Trade Practices for the Distribution and Exhibition of Motion Picture Films.

Film agreements between exhibitors and distributors are made by bidding for films or by negotiating for films. Currently, initial film agreements are made without the theatre's film representative being able to view the film or many times, even be aware of subject matter or stars of the film. This practice is known as "Blind Bidding" and is comparable to buying a new car without being able to see the size, color, number of wheels, etc. This is an important part of this bill, to be able to see a motion picture before entering into the financial agreement with the distributor.

This portion of the bill states that the film companies have to screen the film in one of the 11 western states in which similar legislation has passed. The Montana Theatre Owners feel that it is only fair for the product to be seen before a financial commitment is made.

Often times, a film agreement is made as much as a year prior to the playdate of the film and is bought blind. After entering into the agreement, the exhibitor cannot negotiate or bid for other film that is available during the same release time. If, as happened with "Heaven's Gate", a film is suddenly pulled from release shortly before a theatre's playdate, that theatre is stuck without having screen product for that time period because the quality product is no longer available. If, in the case of "Heaven's Gate", the film buyer had been able to view that film before agreeing to run it, perhaps they would have seen that the film was not worth showing. "Blind Bidding" is currently a common practice in the industry and the theatres who don't buy blind often times don't get the product.

The other major portion of the bill would outlaw the common practice of theatres having to guarantee money in order to play films. Currently, many film contracts demand a guaranteed amount of money from the theatre owner. This practice has many negative effects on the exhibitor and often times excludes the smaller theatre owners from negotiating for certain movies.

In closing I would only ask that you do one thing before deciding whether or not to vote for H.B. #409. PLEASE talk to the theatre exhibitor or exhibitors from your district.

Your support of H.B. #409 will be appreciated!

Sincerely,

Dan Klusmann

Dan Klusmann
TOI

THEATRE OPERATORS INC.

ADDRESS REPLY TO:
CIRCUS TWIN THEATRE
3010 NO. MONTANA
P. O. BOX 5599
HELENA, MONTANA 59601
PHONE 406-442-6328

In several Montana towns recently, the guarantees made to the distributor have been in excess of the total gross on the film, resulting in a loss for the theatres in which the films were shown. This has happened not only in large Montana towns but also in many smaller towns where guarantees are commonplace.

In our communities, many factors such as the weather, sporting events or other activities and the subject matter of some of the current films can adversely affect the performance of a motion picture. Partly because of these factors influencing our business, we feel that we shouldn't have to guarantee to a film distributor but that they are entitled to a fair share of what a film grosses based on a percentage.

This bill is currently law in 23 states including Idaho, Washington, Utah and Oregon, and is working well. The bill has not had a adverse effect on exhibitors or on distributors and is something that we really need.

This is a case of large film companies such as MCA-Universal, Transamerica, Gulf & Western, etc., having an unfair advantage over mostly small, independent theatre owners. The distributors certainly do not need the advantage.

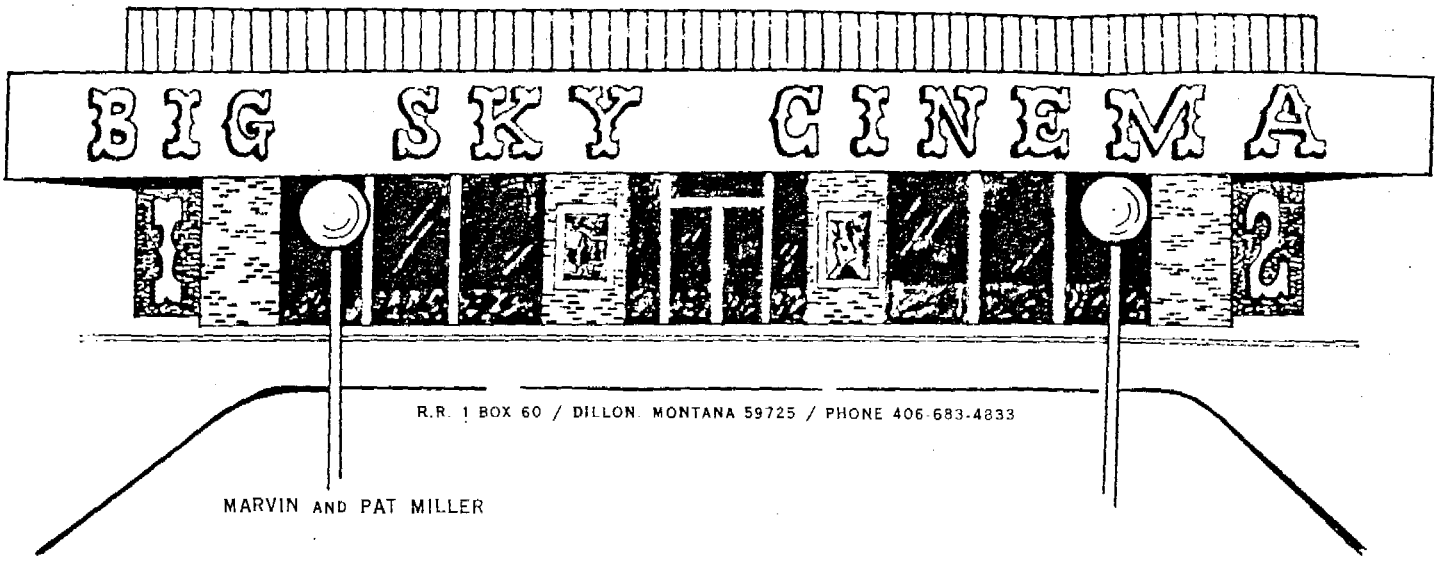
Each and every one of our organization urges you to support this bill as it is crucial to the Theatre Industry in Montana.

If I can answer any questions regarding this subject, please call me locally at my office between 9:00 AM and 4:30 PM.

Thank you very much for your time in regard to this correspondence.

Respectfully Yours,

Fred Nicholls
Manager
Theatre Operators Inc.
Helena, Montana



March 9, 1981

Senator Pat Goodover
Montana Senate
Helena, MT 59601

Dear Senator Goodover

I am writing to you in concern over the passage of H.B. #409, an act establishing Fair Trade Practices for the Distribution and Exhibition of Motion Picture Films.

I am certain that you are aware of the unfairness practiced by the film companies of forcing exhibitors to bid a film without having an opportunity to screen the product. You may not be aware of the need for this bill as it relates to the smaller situation such as ours.

We are affected by the bidding portion of this bill because the terms for settlement, (the percentage of the gross to be paid) is usually determined by the bidding situation and is then carried down through the exhibitors.

The guarantee and advance portions apply directly to us. We are, on occasion, required to post a guarantee and/or an advance on the settlement prior to the film company shipping the print. It hardly seems fair for a small operation such as this to be "loaning" money, interest free, to companies as large as Universal Films, Gulf & Western, Buena Vista, etc. We recently played the movie, Any Which You Can; it was necessary for us to "loan" to Warner Bros. $2,500.00, two weeks prior to the date they were to ship the film. This was in the form of an advance.

The financial investment necessary to establish even a small theatre operation eliminates the possibility of a fly-by-night operation. The leverage is all on the side of the film companies.

Thank you for your consideration.

Sincerely

B. J. Smith

THEATRE OPERATORS INC.

ADDRESS REPLY TO:
MONTANA THEATRE
905 MAIN ST.
P. O. BOX 671
MILES CITY, MONTANA 59301
PHONE 232-2958

March 8, 1981

Senator Pat Goodover
Montana Senate
Helena, Montana

Dear Senator Goodover,

I am writing to ask for your support for the passage of HB 400 Blind Bidding Bill, for the motion picture theaters in Montana. I believe this common sense legislation is in the best interest of, not only the small theaters in Montana, but the general public as well.

We are asking for an opportunity to look at a product before we buy it. We are also requesting that the unfair and unrealistic practice of guaranties (front money based on what the film companies think a town might gross) be eliminated.

This bill is now law in Utah, Washington, Idaho, Oregon and nineteen other states.

Your consideration of the above would be greatly appreciated.

Respectfully,
Robert Johnson
Robert Johnson
City Manager

THEATRE OPERATORS INC.

March 7, 1981

ADDRESS REPLY TO:
MONTANA THEATRE
905 MAIN ST.
P. O. BOX 671
MILES CITY, MONTANA 59301
PHONE 232-2958

Senator Frank Hazelbaker
Montana Senate
Helena, Montana

Dear Senator,

I am writing to you to ask for your support for the passage of HB409-Blind Bidding Bill, for the motion picture theatres in Montana. I beleive that this common sense legislation is in the best interest of not only the small theatres in Montana, but the general public as well.

All we are asking for is an opportunity is at least look at a product before we buy it. We are also asking that the unfair and un-realistic practice of guarantee's (front money based on what the film company's think a town might gross) be eliminated.

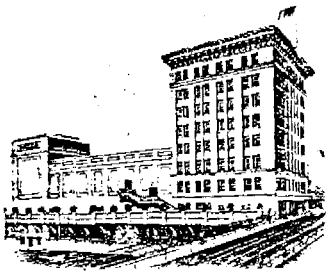
This bill is now law in Utah, Washington, Idaho and Oregon and 19 other states.

I would appreciate your consideration on the above.

Respectfully,

Robert Johnson City Mgr.
TOI Miles City

RJ:



GENERAL OFFICES: WILMA BUILDING
P.O. BOX 7277
MISSOULA, MONTANA 59807
TELEPHONE: (406) 543-4166

FILM BUYING AND BOOKING OFFICES:
W.A. SIMONS AMUSEMENT CO.
WALKER THEATRE SERVICE
350 South 4th East
Suite 222 W
Salt Lake City, Utah 84111
(801) 521-0335

EDWARD SHARP
PRESIDENT

ROBERT V. SIAS
EXECUTIVE VICE-PRESIDENT

SHARP-SIAS ENTERPRISES:

HANSON-SIMONS CO.
OWNING AND OPERATING THE WILMA BUILDING, MISSOULA, MONTANA

W. A. SIMONS AMUSEMENT CO.
AND AFFILIATED COMPANIES

OWNING AND OPERATING THE W.A. SIMONS
CIRCUIT OF MOTION PICTURE THEATRES
MONTANA AND IDAHO

March 9, 1981

Hon. Pat Goodoover, Vice Chairman
Montana State Senate
Helena, Montana 59801

Dear Mr. Goodover :

There is a scheduled Senate Meeing for Montana Theatre Owners, Thursday, March 12th at 10AM re: passage of H. B. 409, an act establishing Fair Trade Practices for the Distribution and Exhibition of Motion Picture Films.

I operate the Wilma 1 and 11 theatres, the Roxy and the Go West Drive in theatres in Missoula, Our competition are the Mann Theatre Circuit, one of the largest chain operators in the U. S., the Commonwealth Theatres out of Denver with a large number of theatres and TOL of Bozeman a smaller group of some 40 theatres all of which through their holdings can maintain a steady cash flow of revenue.

Our position as an Independent with limited financial resources places us with a blind bidding policy in Missoula as follows:

1. No screenings before pictures are sold to us an exhibitor to arrive at a fail market to make a bid.

2. Front money advances of $4,000 to $50,000 on the recent movie STAR TREK with capital we have to borrow to be paid two weeks in advance of the opening of the playdates in our theatres.

3. With the bid attraction not grossing makeup the losses with no adjustment on money advanced to the distributors.

4. Extended playtimes from 4 to as high as 12 weeks or even more as this is required in all bids even when certain pictures after the second week show no indication to fullfill a long run engagement. The exhibitor is not permitted pull the picture.

5. Film rentals with highs of 90% not being uncommon and very seldom lower than 70% 1st week, 60% 2nd week, 50% 3rd week, 40% 4th week and the rest of the entire run at 40%.

Summing it up with this sight unseen policy, front money gurantees, intolerable playtimes and no adjustmnent when a picture fails to gross is a red profit for the exhibitor.

For example in 1980 the Wilma Theatre bid three pictures, GILD ALIVE, ROUGH CUT, and BRONCO BILLY with losses of over $45,000 when these attractions failed at the boxoffice. Why did we bid? We were forced to take a chance in order to have pictures to shown on our screens. GILD ALIVE $10,000, Rough Cut $10,000 and BRONCO BILLY $7,500. These pictures did not gross enough to make guarantees or pay our house expanses. We have not made any operating profit in the past five years to justify a $45,000 loss in 1980 and have been running in the red in Missoula with this blind bidding situation existing.

I will further state that for the first time in almost 60 years of the W. A. Simon's Company operating theatres in Missoula that this is the first year we were unable to pay our property taxes and current bills.

House Bill 409 if favorable passed would give us some fair chance to stay in business.

I would appreciate your help in approving this in committee as well as your vote on the Senate floor.

Respectfully,

Edward Sharp

Roxy Theatre
Choteau, Montana
March 8, 1981

Senator Pat Goodover
Great Falls, Montana

Dear Mr. Goodover:

I have been retired for several years but my wife, with my moral support, operates the little theatre at Choteau. We try to operate it in a respectable manner.

There is a bill coming up in the Senate this week, House Bill No. 409 on the subject of Blind Bidding. This bill is nowlaw in Utah, Washington, Idaho and Oregon and is working well. It is also the law in nineteen other states in addition to those close to Montana.

It is important to us that it pass the Senate as it will have considerable effect on the price we will be forced to pay for prints. It is ridiculous that the price for a feature picture is established by the amount that is bid for a print rental, many times before the shooting has actually started.

We realize that we are certainly a very small part of the moving picture business but our survival depends to a great extent on what happens to the pictures in the larger locations.

We trust that your committee on Business & Industry as well as the Senate as a whole will look favorably upon our efforts to hold the line against unreasonable demands by the big producers.

Respectfully yours,

Myron E. Bean

Myron E. Bean
Roxy Theatre
Choteau, Mont. 59422

THEATRE OPERATORS INC.

ADDRESS REPLY TO:
PLAZA TWIN THEATRES
P. O. Box 3453
BUTTE, MONTANA 59701
Phone 406-494-3341

March 9, 1981

Senator Pat Goodover

Montana Senate

Helena, Montana 59601

Dear Senator Goodover,

This letter is to enlist your support of H.B. 409, An Act Establishing Fair Trade Practices for the Distribution and Exhibition of Motion Picture Films.

Small theatre owners in Montana currently are forced to bid on motion pictures blindly without first being able to see the product they are buying. Another practice currently being used by film companies is to make the exhibitor guarantee the film company a prearranged film rent as a condition of showing the film. Often this amount is in excess of the gross receipts the exhibitor receives.

Although exhibitors are not opposed to film companies receiving their fair share of a pictures gross, we do not feel we should be compelled to unduly risk our limited resources to guarantee the profits of such corporations as MCA-Universal, Columbia, Filmways, Buena Vista, Transamerica, Gulf-Western, who with others in the Motion Picture Association of America (MPAA), control the distribution of 95% of the motion pictures available to exhibitors.

A portion of the bill simply states that an exhibitor be allowed to view a motion picture in one of eleven western states that currently has anti-blind bidding legislation, before that exhibitor has to make the financial arrangements on the picture.

The other major portion of the bill would end the practice of the film companies demanding up front guarantees on pictures. As previously stated these pictures may not gross even enough to cover this guarantee, little alone the rising costs of doing business which every exhibitor faces.

Similar legislation is currently law in states in our area such as Utah, Washington, Idaho, and Oregon in addition to 19 other states and Puerto Rico. In some states the law has been in effect for three or four years and has worked well in both large and small towns. This has not been detrimental to film companies-whose stocks in recent years have been some of the best on the market.

This bill has my support as well as the support of every exhibitor in Montana, although it has already been amended in the House through lobbying efforts of the MPAA. We feel it is imperative that the Senate not ammend the bill further, if motion picture exhibition is to remain a viable business in Montana.

Thank you in advance for your time and consideration of our position. Your support of this bill will help insure the survival of motion picture exhibition in Montana for all Montanans to enjoy.

Sincere regards,

Michael Curnow, Mgr.

Plaza Twin Theatre

Butte, Montana

EXHIBIT "A"

MONTANA

SAMPLE FILM RENTALS ON SECOND RUN THEATRES

	GROSS/RENTAL	PERCENTAGE RENTAL
CONRAD/ORPHEUM		
Middle Age Crazy		35%
Oh Heavenly Dog		35%
Terror Train		35%
The Rose		35%
Brubaker		40%
Sleeping Beauty	$ 883 - 309	35%
UFO	408 - 142	35%
Starting Over	298.50 - 104.78	35%
*Star Trek	841.00 - 294.35	35%
American Gigolo	596.00 - 208.60	70% adj to 35%
Little Darlings	1008.25 - 403.30	70% adj to 40%
Serial	248.50 - 62.13	70% adj to 25%
Friday the 13th	593.50 - 207.73	70% adj to 35%
Urban Cowboy	994.50 - 397.80	70% adj to 40%
Rough Cut	219.50 - $100 minimum adj	from 70%
Airplane	625.50 - 218.93	70% adj to 35%
The Hunter	282.00 - $100 minimum adj	from 70%
Coast to Coast	182.00 - $100 minimum adj	from 70%
CUTBANK/STATE THEATER		
Middle Age Crazy		35%
Terror Train		35%
Brubaker		40%
All That Jazz		35%
The Rose		40%
Sleeping Beauty	1078 - 377	35%
UFO	913 - 319	35%
North Dallas 40	740.50 - 259.18	adj to 35%
Starting Over	373.00 - 130.55	70% adj to 35%
*Star Trek	1084.25 - 379.49	adj to 35%
American Gigolo	922.00 - 322.70	70% adj to 25%
Little Darlings	1163.50 - 465.40	70% adj to 40%
Serial	453.25 - 113.31	70% adj to 25%
Friday the 13th	1774.00 - 709.60	70% adj to 40%
Urban Cowboy	1747.25 - 698.90	70% adj to 40%
Rough Cut	356.25 - 124.69	70% adj to 35%
Airplane	993.00 - 347.55	70% adj to 35%
The Hunter	595.50 - 208.43	70% adj to 35
Coast to Coast	447.25 - 111.81	70% adj to 25%
CUTBANK/DERRICK DRIVE IN		
The Rose		35%
Butch & Sundance		$75
Lady and Tramp	314 - 110	35%

* 90/10 over house expense adjusted down

	GROSS/RENTAL	PERCENTAGE RENTAL
LLON/BIG SKY		
*Scavenger Hunt	$ 1140 - 399	35%
*The Rose	1050 - 414	40%
*Fatso	648 - 227	35%
*Norma Rae	1051 - 361	35%
*All That Jazz	1080 - 370	35%
*Empire Strikes	4137 - 2896	70%
Week 2	1649 - 989	59.9%
*Oh Heavenly Dog	818 - 285	35%
*Brubaker	1548 - 619	39%
*My Body Guard	1158 - 463	40%
*Middle Age Crazy	442 - 155	35%
*The Fog	1164 - 407	35%
*Baltimore Bullit	892.50 - 223.13	25%
*Prom Night	1213.50 - 424.73	35%
*Hopscotch	688.50 - 240.98	40%
Starting Over	1248 - 436.80	35%
Star Trek	1935 - 677.25	35%
American Gigolo	1297 - 324.38	25%
Serial		100 flat
Little Darlings	1873 - 655.73	35%
Friday 13th	1648.50 - 576.98	35%
Rough Cut	1341 - 469.35	35%
Airplane	1744.50 - 697.80	40%
Urban Cowboy	2523 - 1009.20	40%
The Hunter	733.50 - 256.73	35%
Coast to Coast	1039.50 - 259.88	25%
Any Which Way You Can	7702 - 4802.00	1. 70%
		2. 60%
		3. 50%
Awakening	861 - 301	35%
Fu Manchu	771 - 231	30%
Shining	1885 - 659	35%
Bronco Billy	1854 - 927	50%
Every Which Way	1432 - 501	35%
Tom Horn	1965 - 676	1. 35%
		2. 30%
Going In Style	1761 - 704	40%
Time After Time	574 - 172	30%
Private Benjamin	3773 - 1592	1. 50%
		2. 35%
Oh God II	1738 - 608	35%
Big Brawl	466 - 139	30%
Caddy Shack	2746 - 953	1. 35%
		2. 30%
Honeysuckle Rose	2328 - 814	35%
Mad Magazine	1677 - 586	35%
*Song of South	1891 - 851	45%
Midnight Madness	802 - 240	30%
Lady & Tramp	2049 - 1024.50	50%
Last Flight Noahs Ark	873 - 305	35%
Mary Poppins	1383 - 553	40%
Herbie Goes Bananas	1461 - 584	40%
*Black Hole	1254 - 752	1. 60%
Week 2	638 - 319	2. 50%

* 90/10 over house expense -- adjusted down

	GROSS/RENTAL	PERCENTAGE RENTAL
LASGOW		
Empire Strikes BAck	3182 - 1909	$800 guar.
Oh Heavenly Dog		35%
My Bodyguard		35%
The Rose		40%
Middle Age Crazy		35%
Midnight Madness	796 - 278	35%
Herbie Goes Bananas	1576 - 551	35%
Serial	755.00 - 264.25	70% adj to 35%
American Gigolo	1198.75 - 539.44	70% adj to 45%
Little Darlings	2223.75 - 1111.88	50%
Friday the 13th	965.00 - 386.00	70% adj to 40%
Urban Cowboy	2290.00 - 1145.00	70% adj to 50%
Airplane	1226.25 - 490.50	40%
Rough Cut	662.50 - 231.88	35%
Hunter	574.50 - 201.08	70% adj to 35%
AMILTON/ROXY		
Empire Strikes Back	2890 - 1724	$1000 guar.
Brubaker		40%
The Rose		35%
UFO	906 - 453	50%
Sleeping Beauty	1855 - 1132	61%
Starting Over	793.75 - 277.81	35%
*Star Trek	1377.75 - 482.21	70% adj to 35%
Little Darlings	1033.25 - 361.64	35%
Urban Cowboy	1154.50 - 461.80	70% adj to 40%
Rough Cut	740.50 - 259.18	70% adj to 35%
Airplane	1201.25 - 480.50	70% adj to 40%
AMILTON/STARLITE DRIVE IN		
Last Flight of Noahs Ark	697 - 261	40%
ALISPELL/GATEWAY 1 & 2		
American Gigolo	2676.50 - 802.95	70% adj to 30%
Little Darlings	3650.00 - 1277.50	70% adj to 35%
*Rough Cut	4398.00 - 2199.00	50%
*Urban Cowboy	3636.00 - 2181.60	60%
*Airplane	5288.50 - 3140.10	60%
Airplane (Week 2)	1752.00 - 613.20	70% adj to 35%
Hunter	3373.50 - 1180.73	35%
Hunter (Week 2)	2541.00 - 762.30	30%
Star Trek	272.00 - 100.00	min
AUREL/MOVIE HAUS		
Hero at Large	607 -	60% adj to 35%
Long Riders	391 -	60% adj to 35%
Final Countdown	819 -	60% adj to 35%
Roller Boogie	667 -	35%
Hide In Plain Site	333 -	35%
Fish Who Saved Pittsburg	330 -	35%

90/10 over house expense adjusted down

	GROSS/RENTAL	PERCENTAGE RENTAL
LAUREL/MOVIE HAUS (continued)		
Black Stallion	697 -	50%
Starting Over	106.50 - 50.00	min
Star Trek	621.40 - 217.49	35%
American Gigolo	127.50 - 100.00	min
Little Darlings	670.50 - 234.68	70% adj to 35%
Friday	373.00 - 130.55	70% adj to 35%
Urban Cowboy	1050.25 - 420.10	70% adj to 40%
Empire Strikes Back	1971 - 1182	$300 guar.
Airplane	1069.25 - 427.70	70% adj to 40%
Hunter	462.50 - 161.88	70% adj to 35%
LEWISTOWN		
Breaking Away		35%
Brubaker		40%
All That Jazz		35%
Empire Strikes Back	(2500 Advance)	70% & 60%
Oh Heavenly Dog		35%
Black Stallion	1094 -	70% adj to 35%
Apocalypse Now	1034 -	50%
Revelation	245 -	35%
Americathon		$50 flat
Fiddler on the Roof	865	60% adj to 35%
Roller Boogie	890	60% adj to 35%
Hero at Large	608	35%
Long Riders	1497	35%
LEWISTOWN/WESTERNAIRE DRIVE IN		
Midnight Madness	604 - 166	30%
SHELBY/ROXY		
Middle Age Crazy		35%
Terror Train		35%
Brubaker		40%
All That Jazz		35%
UFO	797 - 278	35%
Sleeping Beauty	1087 - 333	35%
Starting Over	336.50 - 117.78	70% adj to 35%
*Star Trek	1106.50 - 387.28	35%
American Gigolo	658.25 - 230.39	70% adj to 30%
Little Darlings	1088.75 - 435.50	70% adj to 40%
Serial	477.25 - 119.31	70% adj to 25%
Friday the 13th	1248.50 - 499.40	70% adj to 40%
Urban Cowboy	1172.25 - 468.90	70% adj to 40%
Rough Cut	400.25 - 140.09	70% adj to 35%
Airplane	1068.75 - 427.50	70% adj to 40%
Hunter	496.50 - 173.78	70% adj to 35%
Coast To Coast	370.00 - 92.50	70% adj to 25%
WOLF POINT/LIBERTY		
Middle Age Crazy		35%
My Bodyguard		35%
Empire Strikes Back	2005 - 1237	$350 guar.

* 90/10 over house expense adjusted down

	GROSS/RENTAL	PERCENTAGE RENTAL
WOLF POINT/LIBERTY (continued)		
Brubaker		40%
Last Flight of Noahs Ark	391 - 156	40%
Midnight Madness	464 - 162	35%
WOLF POINT/WALKER THEATRE		
Black Stallion	506 -	50%
Fish Who Saved Pittsburg	345 -	35%
Apocalypse Now	863 -	50%
Fiddler on the Roof	296 -	35%
Roller Boogie	620 -	35%
Hero At Large	416 -	35%
Long Riders	560 -	60% adj to 35%
Final Countdown	493 -	60% adj to 35%
Motel Hell	$75 flat	

EXHIBIT "B"

Paramount Pictures Corporation

Motion Picture Division

September 28, 1979

COMMONWEALTH THEATRES, INC.
MANN THEATRES CORPORATION
THEATRE OPERATORS, INC.
WALKER THEATRE SERVICE
JOE STAATS

RE: MISSOULA, MONTANA

Gentlemen:

We enclose our request for Offer Contract Forms for your convenience in submitting an offer on the following production:

PICTURE:	AIRPLANE - FLYIN' HIGH (Tentative Title)
AVAILABLE:	JULY 11, 1980
RUN:	EXCLUSIVE FIRST RUN
DUE BACK:	OCTOBER 12, 1979 at 5:00 P.M.

Sincerely,

Robert Box

Robert A. Box
Branch Manager

RAB/bm
Enclosures

Paramount Pictures Corporation

Motion Picture Division

September 28, 1979

Gentlemen:

Paramount Pictures will release AIRPLANE - FLYIN' HIGH (Tentative Title) on July 11, 1980.

The following is a synopsis for AIRPLANE - FLYIN' HIGH:

AIRPLANE - FLYIN' HIGH is a send-up on old-time flying movies, poking hilarious fun at the plane disaster movies which have involved incredible heroics and an all-star passenger list, which includes Jose Feliciano, Ethel Merman and Jimmy Walker, appearing in cameo roles. This one has its tongue strictly in its cheek, with a character list that has got to be the oddest assortment of spaced-out types ever to fly the clouds.

The creative talents behind AIRPLANE - FLYIN' HIGH are solid professionls who have brought some of the best comedies ever filmed to the screen. This is a Howard W. Koch Production and that's a name synonymous with taste and flair in films. Koch was the producer of LAST OF THE RED HOT LOVERS, his fifth film written by Neil Simon for Paramount Pictures. He was executive producer on the 1953 Frank Sinatra film of Simon's first Broadway comedy hit, COME BLOW YOUR HORN. Later came Simon's THE ODD COUPLE in 1968, PLAZA SUITE and STAR SPANGLED GIRL in 1971. Mixed between was the musical fantasy with Barbra Streisand, ON A CLEAR DAY YOU CAN SEE FOREVER. He was also executive producer of, among others, SERGEANTS THREE, MANCHURIAN CANDIDATE, ROBIN AND THE SEVEN HOODS, NONE BUT THE BRAVE and THE PRESIDENT'S ANALYST.

With Koch overseeing the production, AIRPLANE - FLYIN' HIGH is destined to become a comedy of class and style.

AIRPLANE - FLYIN' HIGH represents the creative talents of the men who rocked the screen with KENTUCKY FRIED MOVIE, an irreverent comdey that stuck barbs in all manner of our lives and morals. With a wink in their eyes, they are making AIRPLANE - FLYIN' HIGH one of the funniest satires ever put on film, never forgetting where the funnybone is most titillated. These inventive comic minds belong to producer Jon Davison, director Abraham N. Zukers,

and executive producers Jerry Zucker, David Zucker and Jim Abrahams (who also wrote the script).

Two bright new Hollywood talents will play the central characters in AIRPLANE - FLYIN' HIGH. Robert Hays plays Striker, a fighter pilot in World War Two who went to pieces after a crash. Hays is the engaging co-star of television's top-rated "Angie" series. Playing opposite him will be Julie Haggerty, a top New York model who will be making her motion picture debut.

AIRPLANE - FLYIN' HIGH fun and laughs begin when a four-engined prop passenger plane takes off from Los Angeles for Chicago. Even the take-off is shaky, a parody of the spectacular takeoffs of the huge jumbo jets. Striker, the former fighter pilot, is attracted to one of the stewardesses, Elaine, who knew Striker when they were both stationed in the African jungle and she was his girl (you think Tarzan and Jane had a wild time in the jungle-wait until you see how Elaine and Striker swung on the trees).

Striker still feels that same old magic with Elaine, but she says it is useless. There has been too much that has gone down between them to ever reconcile their differences.

The passenger list on AIRPLANE - FLYIN' HIGH is a motley collection of bizarre characters. There is on board a flying nun (though no one seems quite certain what she's flying on), a little girl being flown from Los Angeles to Chicago for a heart transplant (a staple of the real airplane movies), two jive-talking black dudes who seem to have invented their own language, and a doctor (Leslie Nielsen) who hides a terrible secret about his past (you don't think we're going to tell you and give away his plot?)

Shortly after take-off, the two pilots, the radio operator and most of the passengers become unconscious after eating bad fish served for dinner. You know how airplane food is. Well, there they all are, up in the sky with no one to guide them - except there's Striker to the rescue!

Striker takes the controls of the airplane and is talked into landing the plane in Chicago by radio instructions from Kramer (Robert Stack), a fellow fighter pilot in the war. It is the craziest landing you've ever seen.

Though Striker hits tall buildings on his approach (he's a little rusty, after all), the plane lands safely. He is a hero - and he and Elaine are going to give it another try together. But they're not taking a plane for their honeymoon. It's going to be a long cruise.

We wish to advise you that we do not have prints for screening purposes at this time and we have been advised the exhibitors are now booking their theatres for this important playing time.

We regret the necessity of soliciting offers in advance of screening. However, the competitive situation is such that we must take this course of action. We are certain that you will appreciate the business necessities which require our action on this part and feel confident that you will concur with us in this matter.

The bids are due back in the Home Office Bidding Department no later than October 12, 1979 at 5:00 P.M.

Suggested policy terms are as follows:

Minimum Playing Time: Four (4) Weeks
90/10, with the following minimums:
1st week - 70%
2nd week - 60%
3rd week - 50%
4th week - 40%
Balance - 35%

All contracts must include a reasonable holdover figure..

Paramount shall have the right, at its sole discretion, to terminate the engagement at the completion of the contracted playing time.

Sincerely,

Robert A. Box
Branch Manager

RAB/bm
Enclosures

EXHIBIT "C"

Hollywood Reporter

50

EARS OF SERVICE TO THE INDUSTRY VOL. CCLXV, NO. 25 HOLLYWOOD, CALIFORNIA, TUESDAY, FEBRUARY 10, 1

Blind-bidding factions nearing final deal; blocks still remain

By ROGER CELS

RENO – Distribution and exhibition are closer than at any time in recent years to a negotiated settlement of the blind-bidding controversy, representatives of the two factions disclosed at a press conference yesterday.

Motion Picture Association of America president Jack Valenti and his exhibitor counterpart, Richard Orear, president of the National Association of Theatre Owners, concurred that they are in basic agreement on a resolution of the dispute and that only procedural problems related to the implementation of such a compromise stand in the way of a final deal. However, both men also stressed that the stumbling blocks to consummation of an agreement, which includes what to do about the 19 states that have already outlawed blind-bidding, are major ones that will not be easily overcome.

Ongoing discussions between Orear and Valenti, and the respective attorneys of their organizations, narrowed the differences between the two sides to a single issue recently, they indicated. This issue, which neither man would elaborate upon, prompted rejection by the board of MPAA of a compromise proposal, Valenti said.

While neither trade representative would be more specific, the essence of the present stalemate was generally agreed to be the question of the existing antiblind-bidding block of 19 states (and Puerto Rico).

Orear offered that these laws might be amended to conform with any settlement, but Valenti quickly "disassociated" himself with that assessment, pointing to the fact that many legal questions remained. He also brought up the point that antitrust considerations might bear on any agreement.

NATO queried the Justice Dept. a year and a half ago as to its attitude toward the propriety of such a negotiated settlement and the agency responded unfavorably. Trade associations are not supposed to negotiate trade practices under federal regulations and Justice would have to grant an exception in order for it to condone a pact.

While proffering hope of a speedy nationwide resolution of the blind-bidding dispute, Orear indicated at the news conference that NATO would pursue the state-by-state elimination of the practice.

In a speech later in the day yesterday, during opening ceremonies of ShoWest '81 at the MGM Grand Hotel here, Orear was more militant on the issue of blind-biding and less optimistic about the negotiations with Valenti.

"I regret to tell you that these meetings (with Valenti) have not borne fruit," he told the gathered exhibitors, and, in lesser numbers, production, distribution, and other industry-related factions. Noting that some 15 more states will consider antiblind-bidding legislation this year, he pledged to "continue to try to eliminate" the practice as it is "unfair."

Valenti, also a keynote speaker at yesterday's ceremonies, did not touch on the blind-bidding issue, but instead trotted out statistics on last year's movie business, most of which were released by the MPAA last week and reported on in this paper.

Most surprising was that new releases by the 10 MPAA companies (now 11 with the addition this year of Orion Pictures) increased by only three over 1979 to 137 in 1980, a period which saw Orion sharply increase its output through Warner Bros. and which was generally looked upon as plentiful in terms of product.

As previously reported, the overall national boxoffice gross last year slipped by 3% to $2.75 million, while admissions declined 9% to 1.021 billion. The average negative cost of a film distributed by the MPAA companies rose roughly 6% in 1980 to $9.38 million, much slower than the rate of inflation for the economy as a whole.

Valenti also touched in his speech on the emerging home entertainment avenues and the possible impact of these systems on theatres, an issue on which he and Orear had differed earlier. The MPAA chief held that home entertainment systems and theatres cater to two distinctly different audiences, but Orear warned that "a tremendous number of theatres will go under if quick release of features to these other markets is pursued."

Valenti accused exhibition of "forcing distribution to seek other forms" of release with its antiblind-bidding campaign, but Orear appeared unmoved.

Other issues covered during the news conference included a test of a more explanatory film ratings system under way in the Midwest, but nothing of substance was revealed.

EXHIBIT "D"

LOUISIANA LEGISLATIVE COUNCIL
BOX 44012, CAPITOL STATION
BATON ROUGE, LOUISIANA 70804
TELEPHONE
(504) 342-2350

SENATOR CHARLES C. BARHAM
CHAIRMAN
REPRESENTATIVE CLAUDE LEACH, JR.
VICE CHAIRMAN

DEVAN D. DAGGETT
EXECUTIVE DIRECTOR
MRS. NORMA M. DUNC
ASSISTANT DIRECTOR

January 18, 1979

Ms. Lisa Pierce
c/o Representative Horton
State Capitol
Atlanta, Georgia 30334

RE: Act 663 of the 1977 Regular Legislative Session Prohibiting Blind Bidding on Movies

Dear Ms. Pierce:

Enclosed is a copy of Act 663 of the 1978 Regular Legislative Session of the Louisiana Legislature and its accompanying digest (synopsis). Also enclosed are copies of the House and Senate Commerce Committee meeting minutes dealing with the consideration of Senate Bill 446, which became Act 663. I believe you can gather the full extent of the arguments for and against this measure from the minutes of the Senate Commerce Committee.

The effect this legislation has had on the state of Louisiana is that the new movies are unavailable for viewing two to three months after they are released for national distribution. For example, the multimillion dollar production of Superman which was released around December 15, 1978, has not been showned in Louisiana as of yet, and is scheduled for early to mid-February.

I trust you will find this information useful and if I can answer any other questions, please do not hesitate to call.

Sincerely,

Kerry L. Cooley

Kerry L. Cooley
Staff Attorney
Senate Commerce Committee

pc
enclosure

By Robert Burkle—The Washington Post

Superman Rests In Legal Tussle

By Stephanie Mansfield
Washington Post Staff Writer

Superman may be able to leap tall buildings in a single bound, but in Virginia the man of steel has been unable to get off the ground.

Warner Bros.' new film, "Superman," which has opened in cities across the country, has yet to appear in Virginia—the first casualty of a 6-month-old state law banning so-called "blind bidding" by local theater operators.

Under the practice, the operators compete by offering financial guarantees to a film's national distributor, without having viewed the film first. Virginia is one of five states to outlaw the practice.

"My kids were so upset they were going to boycott 'Watership Down,'" said Virginia Attorney General J. Marshall Coleman, father of four. "I told them the reason the movie couldn't be shown in Richmond was because they found kryptonite in the James River."

A Warner Bros.' spokesman said yesterday that "Superman" will open Jan 26 in Virginia, more than a month after the film's official debut.

"'Superman' is being used to punish Virginia," said Del. Alan Diamonstein (D-Newport News), chief patron of the blind bidding statute that went into effect July 1. "The film companies indicated at that time that there would be a movie we wouldn't get in the future. Sometimes we have to suffer small indignities to protect the people."

(Cont'd)

Legal Tussle Costs Superman a Booth

SUPERMAN, From C1

But Robert Friedman, Warner Bros.' project executive for "Superman," denied that Virginia had been singled out for "punishment" and said the film was not ready for viewing until Dec. 10.

"If anything, we're punishing ourselves," he said. "It costs us money to go into a state to promote a film which has already opened."

Friedman said the only other state where "Superman" has not been shown is Louisiana, which joined Virginia, Alabama, South Carolina and Ohio in banning blind bidding.

Paul Roth, owner of 15 movie theaters in Virginia, said yesterday, "Warner Bros. said they did not have a print of 'Superman' for us to look at, so we could not negotiate for the film. I think it's a good law. It's unfair to ask someone for a commitment on a commodity you can't see in advance."

The theater owner said bills to outlaw blind bidding are expected to be introduced in 25 states this year, including Maryland, where "Superman" is drawing patrons faster than a speeding bullet.

"Yes, the fact that we can't show the film yet has hurt us financially," Roth said. "But then again, we could have gotten another 'King Kong.'"

Kong, a gorilla, was the star of a much-touted 1977 feature film that disappointed theater operators at the box office.

Exhibit N

-D-

HARRISBURG DRIVE-IN THEATRE

ROUTE 22 & SOUTH MOUNTAIN ROAD

HARRISBURG, PENNSYLVANIA

REPLY TO:
2318 BELLEVUE ROAD
HARRISBURG, PA. 17104
(717) 236-3299

Hon. Richard Thornburgh
Governor of Pennsylvania
Capitol Building
Harrisburg, Pennsylvania 17120

SUBJECT: DESIRED VETO OF SB 702 (Motion Picture Bidding)

Dear Governor:

I and my family are the operators of the HARRISBURG DRIVE-IN THEATER on Route 22 just past the Colonial Park area in suburban Harrisburg.

For years, the family had a management contract with United Artists* and were completely removed from the daily operation of the theater, however last year we did not renew the management contract and assumed all management - and therefore film booking - responsibilities.

Frankly, we had become somewhat distressed with the quality of the films being offered at a theater which was under our ownership and, although financially profitable, the negative community reaction to the atmosphere created in the neighborhood by the showing of low quality films with R and X ratings.

There had to be a way to manage a small theater like ours, book quality films, and make a profit. Last year we did it. And, you'll note from the enclosed clipping of a Letter to the Editor, one area person was so pleased she took pen in hand and gave us an unsolicited public commendation. The sentiments reflected in the letter, were repeated every night at our ticket booth and our refreshment stand.

I am gravely concerned that the severe requirements contained in Senate Bill 702 will eventually make it very difficult for a small, non-chain theater to compete in the market place for quality motion pictures and that the few crumbs which are left to us will force us back to the days of R and X rated films with the attendant crowd control problems and neighborhood disturbances.

If a distributor of a quality motion picture has the choice of booking the film into a gigantic shopping center chain or our little drive-in, he will automatically opt for the chain because the income to the distributor is based on a percentage of the gross receipts. Senate Bill 702 would forbid the distributor asking or even me offering a guarantee or advance - if I so choose - in an effort to offset the chain's natural advantage.

*United Artists Theatre Circuit, Inc.

As a small theater owner, I view Senate Bill 702 as yet another, and perhaps the final, attempt by large out-of-state chains to drive out competition and completely monopolize the industry in this state.

If that occurs, I envision the kind of impersonal management and film booking practices that brought such negative community reaction in my area. I see the time when gigantic chains will offer cheap X and R rated films to the masses for fat economic gain without regard to the harm done to society.

As a small businessman, I am deeply concerned that the Commonwealth of Pennsylvania would enact legislation which, for no reason of public good, enters into and interferes with very proper negotiations in commerce.

Such unwarranted government intervention might be fine for corporate giants - they always seem to want government out of the business world unless it specifically benefits them - but I see this legislation as driving the nail in the coffin of what small theater operations are left in Pennsylvania.

I respectfully urge your veto of this legislation.

Thank you for your consideration.

Sincerely,

Michael P. Kerrigan

CC: Richard A. Stafford
Secretary for Legislative Affairs

Richard H. Glanton, Esq.
Deputy Counsel to the Governor

EXHIBIT "E"

TWENTIETH
CENTURY-FOX
FILM CORPORATION

DENNIS C. STANFILL
CHAIRMAN OF THE BOARD

October 20, 1980

The Honorable Governor
Edward J. King
The Commonwealth of
Massachusetts
Executive Department
State House
Boston, Massachusetts 02133

Dear Governor King:

Thank you for your letter of October 9, 1980. I appreciate your kind words about our hospitality while you were at the Studio.

I regret that I was away and not able to see you. I very much wanted to tell you how disappointed we were with the action of your State toward motion picture and television production. Blind bidding legislation enacted in Massachusetts was both unnecessary and ill-conceived. It is directly contrary to the spirit of deregulation which is accepted in every phase of American life. It seeks to protect people who do not need protection -- the theatre owners of Massachusetts. Your State has some of the most successful and prosperous theatre owners in this country.

Twentieth Century-Fox will not willingly start a motion picture or television production in the State of Massachusetts if there is a feasible alternative, as long as your blind bidding legislation is in force. We will go elsewhere to states which are more hospitable to the needs of all of the industry.

I trust that in time, you will see fit to have this ill-advised legislation repealed.

Sincerely,

Dennis C. Stanfill

DCS:mjh

DEPARTMENT OF HIGHWAYS

EXHIBIT "E"

TED SCHWINDEN, GOVERNOR
THOMAS L. JUDGE, GOVERNOR
2701 PROSPECT
STATE OF MONTANA
HELENA, MONTANA 59601

MOTION PICTURE REVENUE

Year		Film	Estimated Revenue Left in Montana	Total
1974				
	Aug. - Oct.	KILLER INSIDE ME Butte - Universal	$ 450,000	
	April - June	RANCHO DELUXE Livingston	500,000	
	Aug. - Oct.	WINTERHAWK Kalispell - Charles B. Pierce	432,000	$ 1,382,000
1975				
	June - July	MISSOURI BREAKS Billings, Virginia City & Red Lodge Universal	5,000,000	
	Aug. - Oct.	WINDS OF AUTUMN Kalispell - Charles B. Pierce	425,000	
	August	(TV) Millers Beer - Commercial Great Falls	10,000	
	August	1/10 POTATO FRITZ Helena - West German Film Co.	15,000	$ 5,450,000
1976				
	Feb. - July	BEARTOOTH Red Lodge - ESI Production - Waco, Tx.	225,000	
	August	1/10 DAMNATION ALLEY Flathead Lake - 20th Century Fox	90,000	
	August	(TV) ALPO - COMMERICAL Forsyth - Dog Food	10,000	
	August	PONY EXPRESS RIDER Virginia City - Doty Dayton Prod. Salt Lake	15,000	$ 340,000
1977				
	April	TELEFON Great Falls - MGM	220,000	
	June	GREY EAGLE Helena - Charles B. Pierce	475,000	

AN EQUAL OPPORTUNITY HANDICAPPED EMPLOYER

	June	DR. HOOKER'S BUNCH Red Lodge - ESI Production	450,000
	August	(TV) DAY OF HELL Aubrey-Lyons Prod. Warm Springs	500,000
	October	(TV) XMAS MIRACLE IN CAUFIELD, U.S.A. 20th Century Fox - Roundup	400,000
	October	SCHOOL BUS SAFETY FILM DOCUMENTARY Missoula	1,500
			$ 2,046,500
1978			
	Feburary	WINTER RECREATION U.S.T.S. Film - Whitefish	2,000
	February	WEST YELLOWSTONE SNOWMOBILE RACES Warner Miller Prod. West Yellowstone	2,000
	August	THE SHINING Stanley Kubrick -- Hawk Films, Ltd. Herts, England Warner Bros. Glacier National Park - Scenic Background	50,000
	October	WHITEHORSE SCOTCH - COMMERCIAL Film Fair, Los Angeles Red Lodge Area	20,000
	October	(TV) RODEO RED AND THE RUNAWAY GIRL Highgate Pictires Learning Corporation of America Billings - Broadview	200,000
	December	DATSUN - COMMERCIAL Billings Area	20,000
			$ 294,000
1979			
	January	ARTIC CAT - COMMERCIAL Lyle McIntire Wilson - Kriazh Los Angeles - West Yellowstone	3,000
	February	TOTAL ECLIPSE ABC News Special - Helena	10,000
	February	TOTAL ECLIPSE Astronomical Society of America Paul Ryan - Lewistown & Helena	10,000

Feb. - Oct.	HEAVENS GATE United Artists Kalispell, E. Glacier, Butte & Pole Bridge	17,000,000	
March	SECURITY BANK - COMMERICAL Fry - Sills Associated Film Makers - Miami, Florida Billings Area	8,000	
March - May	HEARTLAND Film Haus/Wilderness Women Prod. Harlowtown - White Sulphur, Two Dot	500,000	
May - June	(TV) WALKS FOR WOMEN - NBC EMI Production Billings, Hardin, Red Lodge	1,400,000	
	MILLER BEER - COMMERCIAL Backer and Spielvogel, Inc. Great Falls, Dillon	20,000	
June	(TV) SOUTH BY NORTHWEST Production - Black Pioneer Virginia City - Nevada City	80,000	
August	RICHARD LEVINE - COMMERCIAL American Airlines Productions Great Falls	10,000	
Sept.	WINSTON - COMMERICAL Frank Moscoti - New York Kalispell, Thompson Falls & Pole Bridge	50,000	
October	TIRE PRODUCT - (BANGDAD) COMMERCIAL Great Falls - Missoula - Cedar Rapids, Iowa Vieda Limited	5,000	
	MILLER BEER - COMMERICAL Backen & Spielvogel, Inc. Red Lodge	70,000	
November	WRIGLEY'S GUM - COMMERCIAL Hang Glider Kalispell - Corum	50,000	$19,216,000
980			
June	GENERAL ELECTRIC CO. - COMMERICAL Big Sky	10,000	

July - August	FAST WALKING Lorimar Prod. Deer Lodge - Old Prison Rocker	1,750,000	
August	GOOD MORNING AMERICA - TV Billings Area	5,000	
September	BIG JOHN JEANS - JAPANESE COMMERCIAL Pyramid Production Bozeman - Livingston	10,000	
	AMERICAN TRAIL - TV DOCUMENTARY Syndicated TV in 25 states Smiloft Television, Lincoln, NE Missoula - Glacier National Park - Big Fork	6,000	
October	KHQ TV - DOCUMENTARY PM MAGAZINE Spokane, WA Moiese Bison Range - Virginia City	5,000	
	CONTINENTAL DIVIDE - FEATURE Universal Studio West Glacier - Apgar - Eagle Migration 3 week shoot	10,000	
November	BIG JOHN JEANS - JAPANESE COMMERCIAL - 2nd Shoot Pyramid Production Bozeman - Livingston	10,000	
			$ 1,806,000
			$30,534,500

GW/kg/S27

ANALYSIS OF HOUSE BILL 409

House Bill 409 outlaws many of the existing business practices of the motion picture industry, practices which have been proven in the marketplace. This bill dictates new terms for contracts between motion picture distributors and theater owners and provides that the distributor and theater owner cannot agree among themselves to waive any of those terms. The bill makes it a crime, punishable by up to six months in jail and a fine of up to $500, for a theater owner or a motion picture distributor to violate any of its provisions.

Why do the sponsors of this measure want to involve Montana's government so extensively in the affairs of a private business? Montana's theater owners are not inexperienced amateurs at the mercy of the major film producers. They are experienced professionals operating large and successful businesses. The majority of the movie theater business in Montana is done by just four companies -- Mann Theatres Corporation of California; Commonwealth Theatres, a Missouri corporation; Theater Operators, Inc., a Wyoming corporation; and Carisch Theaters, Inc., a Minnesota corporation. According to their latest reports, on file with the Montana Secretary of State, those companies had gross receipts of 132.9 million dollars in 1979. The same reports show that those companies took in more than 8.9 million dollars from their Montana operations in that year.

These are not people with whom motion picture companies feel free to deal on a "take it or leave it" basis. They control a large and profitable market for our product. In fact, they are the <u>only</u> market for our films in Montana. We need them to rent and show our

movies far more than they need us. Last Christmas, our members had fourteen films scheduled for release. Helena has four screens. Who is in the better bargaining position? Our rental negotiations with Montana theater owners are far from one-sided affairs. They are tough, able bargainers who are managing their business quite well without the interference of Montana government. The president of the Montana Theater Owners' Association recently reported that, with attendance at Montana theaters increasing, "The theater industry is healthy and it is here to stay." (Great Falls Tribune, May 1, 1980, p. 6-B). Montana theater owners clearly are not in need of the massive governmental intrusion into their business affairs which House Bill 409 would sanction.

With that background, let us examine the specific provisions of House Bill 409.

1. BLIND BIDDING

House Bill 409 prohibits motion picture distributors and theater owners from bidding, negotiating or contracting for the rental of a motion picture until the exhibitor has had an opportunity to see the movie. That sounds reasonable, doesn't it? Unfortunately, the economics of producing motion pictures are such that in many cases producers simply cannot afford the delay that special pre-release showings of a completed film to theater owners would entail.

Because theater owners are the prime market for their products, motion picture producers do provide "trade screenings" for theater owners before bidding or negotiating for their rental as often as circumstances permit. In 1980, members of the Motion Picture As-

sociation of America released 131 films for distribution in Montana. Of those films, 55 were trade screened prior to bidding or rental negotiations. Four were re-releases of earlier movies with which the theater owners were already familiar. One was rented without a trade screening but with a provision in the rental agreement allowing the theater owner to cancel the agreement within 48 hours of receiving the movie. Only 71 of the 131 films were rented "blind", without a trade screening (54%). A majority of Montana's theater owners did not attend the trade screenings of those films for which they were available, even though they were frequently held in Denver or Salt Lake City.

It should be emphasized that no Montana theater owner is compelled to bid on or negotiate for any motion picture before he has seen it. He is free to refuse to bargain for any film. He can wait until the film is released in other areas, see it there, and study the box office receipts it generates before committing himself to exhibit it. Of course, if his theater is located within one of the three cities in this state which has competing theaters, his competitor may take the risk and book the film "blind." House Bill 409 would deprive competing Montana theater owners of that freedom of choice.

Motion picture producers bid blind too -- on a much larger scale than any theater owner. They commit themselves to the expenditure of millions of dollars to make a movie from a book, a play, or often on the basis of a rough idea for a movie. The average production cost for a motion picture by a major company is now over ten million dollars. Advertising and promotion can add another five million dollars. Firm commitments for prime time television commercials

must be made as far as eleven months in advance. Release of the film must coincide with the advertising. Delay in booking a film into theaters may not only miss the impact of an expensive advertising campaign but imposes serious financial burdens on the producers. At today's interest rates, a movie budgeted at fifteen million dollars for production and promotion means over nine thousand dollars a day in bank charges! And most theater owners do not pay their rentals until from 30 to 60 days after they have shown a film.

We must get our products on a paying basis as soon as possible. Blind bidding is often the best means of doing so. Our notices to bidders tell them as much as we can about the as yet unfinished movie. If it is based on a book or a play, we tell them that, together with the figures on sales for the book or play. We tell them what the story is about, the audience at which the film is directed (family, adult, youth, etc.), who the stars are, the name of the director and producer, and the advertising campaign planned to promote it.

On the basis of that description, we invite bids or enter into negotiations with theater owners for rental of the film. At the time bids are invited, we have not seen a final print of the movie ourselves. We are not in the business of misleading theater owners. Our relationship is, of necessity, one of mutual trust. Every unsuccessful movie which we produce makes it more difficult to market our other films. Since most of our rentals are based on a percentage of box office receipts, we want our films and the theater owners who rent them to do well. Motion picture distributors often revise the

terms of a rental agreement downward where a film has not done well in a particular theater. For example, the film, "Dressed to Kill" was rented to the Campus Cinema in Bozeman on the basis of 70% of ticket receipts. When it did poorly, that rental was voluntarily scaled downward to 35%. We trust the theater owners to give us an honest count of their box office receipts. They trust us to provide them with a quality product.

On occasions, we are both disappointed. But we lose much more from an unsuccessful film then the theater owners.

"Blind bidding" is not uncommon in our economy. Manufacturers spend millions on research and development without any assurance that they will develop a marketable product. Exploration for oil and gas proceeds with only limited knowledge of what lies beneath the earth's surface. The consumer is asked to blind bid on many products. When he buys a book or a ticket to a play or a film, he does so on limited information. When a movie patron is disappointed in a film, he has no recourse to recover his expense. Would the theater owners be willing to require by law that they could collect payment from their patrons only after they had seen the movie and then only in the amount the patron thought it was worth?

2. OTHER RESTRICTIVE PROVISIONS OF THE BILL

House Bill 409 would also greatly impair the freedom of motion picture distributors and theater owners to contract in other areas. It would outlaw contract provisions calling for minimum payment guarantees. If this bill is being sold on the basis of the theater owners' need to see a film before negotiating for its rental, why are these provisions necessary? Do the theater owners want the State of Montana to guarantee them a profit as well?

Montana has a comprehensive Unfair Trade Practices and Consumer Protection Act, enacted in 1973, which already provides adequate protection for theater owners. (Sections 30-14-101, et seq., MCA). The state should not be writing our contracts.

Guarantees, which would be prohibited by House Bill 409, are sometimes required but they are almost never payable until two weeks before the film is delivered. Every business makes similar demands of customers. They are a legitimate means of doing business and should not be prohibited.

3. HOUSE BILL 409 IS NOT A CONSUMER PROTECTION BILL

In its statement of purpose, House Bill 409 indicates that it will benefit the moviegoing public by "expanding the choice of motion pictures available" and "holding down admission prices". It will do neither.

Nothing in this bill would or could require motion picture producers to make more movies and all of our production is available for screening in Montana. This bill will not reduce or "hold down" admission prices. States which have enacted similar laws have experienced rising ticket prices just as have states without such laws.

If the sponsors of House Bill 409 really want to "benefit the moviegoing public by holding down admission prices to motion picture theaters" (Section 2), they can draft a bill empowering some state agency to regulate ticket prices and the price of popcorn, candy, and soda pop as well. We suspect the theater owners would object as strongly to such a measure as would we.

CONCLUSION

House Bill 409 is an unwarranted government interference with

the contracting practices of a private industry. According to figures compiled by the Montana Travel Promotion Unit, motion picture production companies have spent over 30.5 million dollars in filming movies in this state since 1974. The movie "Heaven's Gate", which to date has been a financial disaster for its producer, spent some 17 million dollars in Montana.

The motion picture industry is a substantial contributor to the Montana economy. We think that entitles us to fair treatment from Montana government. House Bill 409 is not fair -- it is punitive and unnecessary.

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 14, 1981

An executive meeting was held on Saturday, March 14, in room 404 of the Capitol Building at 12:20 p.m. The meeting was called to order by Chairman Hazelbaker with all members present.

HOUSE BILLS 238, 239, 321, 409, and 510 were scheduled for action.

SENATOR DOVER moved House Bill 238 "do pass as amended". The motion carried with Senators Regan and Boylan voting no. Senator Goodover will carry.

SENATOR DOVER moved House Bill No. 239 "do pass as amended". The motion carried with the vote unanimous. Senator Goodover will carry.

HOUSE BILL NO. 409: Proposed amendments were offered and explained by Senator Lee. Senator Regan commented that it should be either rental or percentage, but not both. Discussion followed.

SENATOR DOVER moved the proposed amendment No. 1.

Page 4, lines 21 through 24
Strike: Section 8 in its entirety.

The motion failed on a tie vote of 4 to 4.

SENATOR LEE moved to amend.

Page 3, lines 7 through 12.
Strike: All of section 5
Insert: "Section 5. A distributor may not require that a motion picture license agreement contain both a payment based on attendance or the box office receipts and a guarantee of a minimum payment to the distributor. However, an exhibitor may offer to license a film on a basis including both a mimimum payment guarantee and a percentage of the box office receipts and, in such cases, the license agreement may contain such terms."

The motion failed on a tie vote of 4 to 4.

SENATOR LEE moved the second page of proposed amendments. Attached. The motion failed on a tie vote of 4 to 4. Senator Boylan moved House Bill No. 409 be concurred in. The motion carried with Senator Lee voting no. Senator Regan will carry.

HOUSE BILL NO. 510: Senator Lee presented proposed amendments to the committee and moved to amend.

Page 1, line 22.
Following: "bond"
Insert: "with 2 or more sureties acceptable to the governmental body letting the contract, or"

Amend HB 409

1. Page 2, line 17.
Following: line 16
Insert: "(4) "Feature motion picture" means a motion picture exceeding 60 minutes in duration."
(5) "First run" means the first continuous exhibition of a feature motion picture in a defined geographic area for a specified period of time."
Renumber: subsequent subsections.

2. Page 2, line 25.
Following: "of a"
Insert: "first run, feature"

3. Page 3, lines 2 and 3.
Following: "exhibitor"
Strike: remainder of line 2 through "picture" on line 3.

4. Page 3, line 5.
Following: "prohibited"
Insert: "(1)"

5. Page 3, line 7.
Following: line 6
Insert: "(2) Notwithstanding subsection (1), a distributor may blind bid up to 3 motion pictures per year."

6. Page 4, lines 21 through 25.
Strike: section 8 in its entirety.
Renumber: subsequent section.

SENATE COMMITTEE BUSINESS AND INDUSTRY

Sat - March 14th

Date _____ Bill No. #709 Time _____

amendments #1 Strike 8 Section 1 Section 8

NAME	YES	NO
Hazelbaker		✓ ✓
Goodover	✓ ✓	
Dover	✓	✓
Kolstad	✓	✓
Lee	✓ ✓	
Blaylock		✓ ✓
Boylan		✓ ✓
Regan		✓ ✓

Secretary _____ Chairman _____

Motion: _____

(include enough information on motion—put with yellow copy of committee report.)

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date Sat. March 14 Bill No. 409 Time 1:00 P.M.

NAME	YES	NO
Hazelbaker	✓	
Goodover	✓	
Dover	✓	
Kolstad	✓	
Lee		✓
Blaylock	✓	
Boylan	✓	
Regan	✓	

Secretary Chairman

Motion:

(include enough information on motion—put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

March 14, 81

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MR. PRESIDENT:

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE Bill No. 409

KEYSER (Senator Regan)

Respectfully report as follows: That HOUSE Bill No. 409

BE CONCURRED IN

~~XXXXXX~~
~~DO PASS~~

Frank W. Hazelbaker, Chairman.

STATE PUB. CO.
Helena, Mont.